

Exhibit 26: Transcript of the July 09, 2008 Deposition of William Mitchell, III

1 STATE OF MICHIGAN 10:03
 2 IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE
 3
 4 DETROIT FREE PRESS, INC., a
 5 Michigan Corporation,
 6 Plaintiff,
 7 Case No. 08-100214-CZ
 8 Hon. Robert J. Colombo, Jr.
 9 DETROIT NEWS, INC.,
 10 Intervenor Plaintiff,
 11
 12 vs.
 13 CITY OF DETROIT,
 14 Defendant.
 15
 16
 17
 18 The **ROUGH DRAFT** Videotaped Deposition of
 19 WILLIAM MITCHELL, III,
 20 Taken at 660 Woodward Avenue, 23rd Floor,
 21 Detroit, Michigan,
 22 Commencing at 10:01 a.m.,
 23 Wednesday, July 9, 2008,
 24 Before Leisa M. Pastor, CSR-3500, RPR, CRR.
 25

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2 WILLIAM H. GOODMAN

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2 MAYER MORGANROTH

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9

10 ALSO PRESENT:

11 Marlene Ring

12 Travis Jewell, Video Technician

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1 Detroit, Michigan
 2 Wednesday, July 9, 2008
 3 10:01 a.m.

10:03 5 VIDEO TECHNICIAN: We are now on the
 10:03 6 record. This is the videotaped deposition of William
 10:03 7 Mitchell being taken on Wednesday, July 9th, 2008.
 10:03 8 The time is now 10:01 and 41 seconds a.m. We are
 10:03 9 located at 660 Woodward Avenue, in Detroit, Michigan.
 10:03 10 We are here in the matter of the Detroit Free Press
 10:03 11 versus City of Detroit. This is case No.
 10:03 12 08-100214-CZ, and this matter is being held in the
 10:03 13 circuit court for the County of Wayne. My is Travis
 10:03 14 Jewel, video technician.

10:03 15 Will the court reporter swear in the
 16 witness and the attorneys briefly identify themselves
 17 for the record, please.

18 WILLIAM MITCHELL, III,
 19 was thereupon called as a witness herein, and after
 20 having first been duly sworn to testify to the truth,
 21 the whole truth and nothing but the truth, was
 10:03 22 examined and testified as follows:

10:03 23 MR. ZUCKERMAN: Go around this side,
 10:03 24 Richard Zuckerman, Honigman, Miller for the Free
 10:03 25 Press.

10:03 1 MS. PHILLIP: Lara Phillip, Honigman,
 10:03 2 Miller, for the Free Press.
 10:03 3 MS. RING: Marlene Ring, Honigman, Miller
 10:04 4 for the Free Press.
 10:04 5 MR. GOODMAN: William Goodman on behalf of
 10:04 6 the Detroit City Council.
 10:04 7 MR. STEWART: James Stewart for the Detroit
 10:04 8 News.
 10:04 9 MR. HIRSCH: Jason Hirsch, Morganroth &
 10:04 10 Morganroth, for Christine Beatty.
 10:04 11 MR. THOMAS: James Thomas and Michael
 10:04 12 Naughton on behalf of Kwame Kilpatrick.
 10:04 13 MR. LIEDEL: William Liedel on behalf of
 10:04 14 the City.

EXAMINATION

10:04 15 BY MR. ZUCKERMAN:
 10:04 16 Q. Okay, good morning, Mr. Mitchell.
 10:04 17 A. Good morning.
 10:04 18 Q. I understand from a phone call that was placed to one
 10:04 19 of our associates that you have limited time today; is
 10:04 20 that correct?
 10:04 21 A. I do, I have a matter that I have to appear in in
 10:04 22 Oakland County this afternoon.
 10:04 23 Q. Okay, what time do you have to be out there?
 10:04 24 A. I have to be there at 1:30.

10:04 1 Q. 1:30, okay, so we'll try to end up to give you enough
 10:04 2 time to get you there, how's that?
 10:04 3 A. That will be much appreciated.
 10:04 4 Q. Okay.
 10:04 5 A. In fact, I'll tell you this. We're going to be done
 10:04 6 at 12:30, because I got to be there by 1:30.
 10:04 7 Q. That's fine.
 10:04 8 A. Okay. Not later than 12:30.
 10:04 9 Q. Okay. And you do not have counsel with you, is
 10:04 10 that --
 10:04 11 A. I do not.
 10:04 12 Q. Okay. Do you have counsel that represents you in this
 10:05 13 matter?
 10:05 14 A. I do not.
 10:05 15 Q. Okay. And your full name is William Mitchell?
 10:05 16 A. The third.
 10:05 17 Q. The third, okay.
 10:05 18 A. Yes.
 10:05 19 Q. Can I have your business address?
 10:05 20 A. 2000 Town Center, Suite 1000, Southfield, Michigan
 10:05 21 48075.
 10:05 22 Q. And you're lawyer admitted to practice in Michigan?
 10:05 23 A. I am.
 10:05 24 Q. Any other jurisdictions?
 10:05 25 A. Pennsylvania, United States Military, Court of

10:05 1 Appeals, and some others.
 10:05 2 Q. Okay. And you -- how do you style your practice?
 10:05 3 A. I don't know what you mean.
 10:05 4 Q. Is it William Mitchell, III, P.C.?
 10:05 5 A. The name of the firm is Mitchell, Lord & Associates.
 10:05 6 Q. Okay, and how long have you been with that firm?
 10:05 7 A. Mr. Lord and I have been together about three years.
 10:05 8 Q. Okay. And where were you before then?
 10:05 9 A. Sherbow & Mitchell.
 10:05 10 Q. Can you spell that?
 10:05 11 A. S-h-e-r-b-o-w, and Mitchell.
 10:05 12 Q. And how long were you with that firm?
 10:05 13 A. About eight years.
 10:05 14 Q. Okay. I'm going to mark as Exhibit 1 the subpoena
 10:06 15 that was served upon you in this case and I have a
 10:06 16 copy for you.
 10:06 17 A. Thank you.
 10:06 18 MARKED BY THE REPORTER:
 10:06 19 DEPOSITION EXHIBIT NUMBER 1
 10:06 20 10:04 a.m.
 10:06 21 BY MR. ZUCKERMAN:
 10:06 22 Q. Take a quick look through that, if you will.
 10:06 23 A. I've seen it before.
 10:06 24 Q. Okay. And you did receive it in connection with
 10:06 25 today's --

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10:06 1 A. I did.

10:06 2 Q. -- deposition? It -- contained within it is a

10:06 3 production request. We did not receive any -- any

10:06 4 documents. Did you send us any documents?

10:06 5 A. I don't believe I have any documents. I take that

10:06 6 back. I don't believe I have any documents other than

10:06 7 possibly some correspondence that I had with SkyTel

10:06 8 that would be relevant or not otherwise privileged.

10:07 9 Q. Okay. You have correspondence to and from a company

10:07 10 called SkyTel; is that correct?

10:07 11 A. That's correct.

10:07 12 Q. What is your understanding of what SkyTel is?

10:07 13 A. SkyTel is a communications company located outside of

10:07 14 Jackson, Mississippi.

10:07 15 Q. Okay, and you -- you have in your possession letters

10:07 16 you sent to SkyTel?

10:07 17 A. Letters back and forth, letters I had sent and I

10:07 18 received.

10:07 19 Q. Okay, and you are not producing them because you

10:07 20 believe they're privileged?

10:07 21 A. No, I have those to produce for you.

10:07 22 Q. Oh, okay.

10:07 23 A. Actually, I -- knowing what kind of lawyers you are, I

10:07 24 would assume that you already have these letters, but

10:07 25 nonetheless, I do have, I think, a copy of them for

10

10:07 1 you.

10:07 2 Q. Okay. I'd like to see them, please.

10:07 3 A. I believe that's a full set.

10:07 4 Q. Okay, just I've noticed that they're Bates stamped.

10:08 5 Did you Bates stamp them?

10:08 6 A. I did.

10:08 7 Q. Okay, and they're Bates stamped 1 through and

10:08 8 including 7 with five leading zeros; is that correct?

10:08 9 A. I believe that's correct.

10:08 10 Q. 1, 2, 3, oh, there's -- that's page 2, page 3, page 4,

10:08 11 I don't see a 5, but I see a 6 and a 7.

10:08 12 A. Okay.

10:08 13 Q. So whatever's here is here; is that right?

10:08 14 A. That's right.

10:08 15 Q. Okay.

10:08 16 A. If I missed something, I'll be happy to -- but I

10:08 17 believe my assistant made the copies so --

10:08 18 Q. Okay. Well, we'll get back to those --

10:08 19 A. Okay.

10:08 20 Q. -- a little later. And there are no other documents

10:08 21 responsive that --

10:08 22 A. I have -- well, looking at the document requests with

10:08 23 respect to No. 1, I don't have those records, No. 2, I

10:08 24 don't have that record, No. 3, I don't have that

10:09 25 record, No. 4 I've just given you, I believe, and

10:09 1 No. 5, I don't have any of that.

10:09 2 Q. Okay, for the record, the items that Mr. Mitchell

10:09 3 referred to are on deposition -- Mitchell Deposition

10:09 4 Exhibit 1 but Bates stamped FREEP, F-R-E-E-P, 326 and

10:09 5 327, that's where items 1, 2, 3, 4, and 5 can be

10:09 6 found. This is for purposes of identification.

10:09 7 Are you withholding any documents that are

10:09 8 otherwise called for in the subpoena on the grounds of

10:09 9 any privilege?

10:09 10 A. No.

10:09 11 Q. Okay. Do you know who Christine Beatty is?

10:09 12 A. I do.

10:09 13 Q. Have you ever represented her?

10:09 14 A. I have.

10:09 15 Q. Can you tell me when?

10:09 16 A. Between the time period of late October of 2007 and

10:10 17 about December or January of 2008.

10:10 18 Q. Was your representation -- strike that.

10:10 19 Are you aware of two lawsuits which I will

10:10 20 generally describe but if you need more detail, I can

10:10 21 show you documents, one of which is Brown and

10:10 22 Nelthrope versus the City of Detroit and the other is

10:10 23 either a lawsuit or a claim filed by a Mr. Harris

10:10 24 against the City of Detroit?

10:10 25 A. I -- I know about those lawsuits. I was not involved

12

10:10 1 in either one.

10:10 2 Q. Okay. And does your -- did your representation of

10:10 3 Ms. Beatty pertain to either of those two lawsuits or

10:10 4 the settlement thereof?

10:10 5 A. In a very, very, narrow sense, yes.

10:10 6 Q. Okay. And it appears that your representation went

10:10 7 for about three months or so; is that right?

10:11 8 A. Well, I'll tell you this. My representation of Ms.

10:11 9 Beatty involved being the recipient of some documents

10:11 10 that belonged to her.

10:11 11 Q. Okay. Do you care to -- we might get that to that

10:11 12 here?

10:11 13 A. Yeah.

10:11 14 Q. Because I don't know what documents you're really

10:11 15 referencing?

10:11 16 A. Yeah, okay, sometime around December 6th of 2007, I

10:11 17 appeared at the request of I assumed Ms. Beatty and

10:11 18 Ms. -- and the mayor of Detroit at the Comerica Bank

10:11 19 to receive documents that were to be exchanged between

10:11 20 Mr. Stefani office, and other lawyers. I received

10:11 21 documents on behalf of the mayor and Ms. Beatty.

10:11 22 Q. Okay. And that was the extent of your representation

10:11 23 of Ms. Beatty?

10:11 24 A. That was the extent -- well, not exactly, because I

10:11 25 also represented her to some extent with respect to

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10:11 1 the SkyTel inquiries.

10:11 2 Q. Okay, we'll get to both those subjects.

10:12 3 MR. THOMAS: Mr. Zuckerman, at this point,

2 4 I'd like to state on the record that the mayor is not

10:12 5 waiving any rights or privileges that he might have as

10:12 6 it relates to the attorney-client privilege, and since

10:12 7 he has now answered a question as it relates to his

10:12 8 representation, I'm assuming that this representation

10:12 9 was not as a result of any discussions or that the

10:12 10 last answer to that question wasn't as a result of

10:12 11 any -- any discussions that Mr. Mitchell or the mayor

10:12 12 might have had because that privilege is not being

10:12 13 waived as it relates to the mayor?

10:12 14 MR. ZUCKERMAN: Okay.

10:12 15 MR. HIRSCH: And I'll raise the same

10:12 16 objection on behalf of Ms. Beatty, and I presume

10:12 17 Mr. Mitchell will say the same thing as to Ms. Beatty.

10:12 18 BY MR. ZUCKERMAN:

10:12 19 Q. Mr. Mitchell, have you represented the City of

10:12 20 Detroit?

10:12 21 A. Have I represented the City? I can't recall ever

10:12 22 representing the City of Detroit. I have been

10:12 23 involved as co-counsel with Miller Canfield in the

10:13 24 representation of authority that's related to the City

10:13 25 of Detroit.

10:13 1 Q. Okay, I don't think that --

2 MR. GOODMAN: Excuse me, I didn't hear

3 that.

4 THE WITNESS: I was an authority --

5 MR. GOODMAN: An authority?

6 THE WITNESS: Of the GDRRA.

10:13 7 BY MR. ZUCKERMAN:

10:13 8 Q. Could you spell that or --

10:13 9 A. Greater Detroit Resource Recovery --

10:13 10 Q. Okay.

10:13 11 A. -- Authority.

10:13 12 Q. And have you ever represented the mayor as his

10:13 13 personal attorney?

10:13 14 A. Have I -- prior to 2007?

10:13 15 Q. Yes.

10:13 16 A. No.

10:13 17 Q. Okay. Have you represented the mayor in connection

10:13 18 with his role as mayor prior to 2007?

10:13 19 A. No.

10:13 20 Q. Okay. The representation of the mayor either as the

3 21 mayor or personally, was -- did you represent him

10:13 22 other than as you previously described with respect to

10:13 23 your travels to the Comerica safety deposit box?

10:13 24 A. I've only represented the mayor in that personal

10:13 25 capacity and my first representation of him was in

10:14 1 October of 2007.

10:14 2 Q. Okay, thank you. I'm going to ask you some questions

10:14 3 that -- that may seem peculiar but they relate to some

10:14 4 of the defenses that have been put forth in this case.

10:14 5 Are you a CPA?

10:14 6 A. No.

10:14 7 Q. Okay. Are you any type of an accountant?

10:14 8 A. I have a degree in accounting.

10:14 9 Q. You do. Have you ever acted as an accountant for the

10:14 10 mayor or Ms. Beatty?

10:14 11 A. I have not.

10:14 12 Q. Okay. And by accountant, I mean that in the broadest

10:14 13 sense, not just CPA. There's a CPA, there's a public

10:14 14 accountant, there's a bookkeeper, anything like that?

10:14 15 A. And the question is have I acted in that capacity?

10:14 16 Q. For Ms. Beatty or the mayor.

10:14 17 A. No.

10:14 18 Q. Okay. I also take it you're not a member of the

10:14 19 clergy?

10:14 20 A. Well, it depends. No.

10:14 21 Q. Okay.

10:14 22 A. Some of us think of our work as God's work, so

10:15 23 perhaps.

10:15 24 Q. You mean a lawyer?

10:15 25 A. Yes, absolutely.

10:15 1 Q. Oh, okay. Have you ever been consulted with respect

10:15 2 to the operations of the City of Detroit by either the

10:15 3 mayor or Ms. Beatty?

10:15 4 A. I don't -- that's -- question's too broad.

10:15 5 Q. Well --

10:15 6 A. What do you mean?

10:15 7 Q. -- there's a defense in this case called a

10:15 8 deliberative privilege, and I'm trying to get as to

10:15 9 whether or not other than the representation that

10:15 10 you've described with respect to the mayor and Ms.

10:15 11 Beatty, you have ever -- you've ever been consulted on

10:15 12 that --

10:15 13 A. Well, if I had, I'm not sure that I -- I'm not sure of

10:15 14 the answer but I believe that that would be privilege

10:15 15 in any event. If you're asking me whether they came

10:15 16 to me and talked to me regarding certain matters.

10:15 17 Q. I'm not asking you about the specifics of the matters,

10:15 18 just if they ever discussed City matters with you. I

10:15 19 don't care to inquire as to what those matters were.

10:15 20 A. In specifics, I don't -- I'm not sure. I mean I --

10:16 21 obviously, have had some conversations with both. But

10:16 22 I don't --

10:16 23 MR. THOMAS: Then I'll object.

10:16 24 COURT REPORTER: I'm sorry, who objected?

10:16 25 MR. THOMAS: I am objecting on behalf of

10:16 1 the mayor.

10:16 2 MR. ZUCKERMAN: Okay.

10:16 3 MR. HIRSCH: And I'm going to object on

5 4 behalf of Ms. Beatty.

10:16 5 BY MR. ZUCKERMAN:

10:16 6 Q. Okay, I'm not -- remember, I'm not asking you about

10:16 7 content, just about the communications.

10:16 8 MR. THOMAS: Well, whether they did or

10:16 9 didn't, if there were communications, those

10:16 10 communications would be privileged, and I'm going to

10:16 11 object to those.

10:16 12 MR. ZUCKERMAN: Okay, but I'll take the

10:16 13 answer, anyway.

10:16 14 A. I -- I --

10:16 15 MR. THOMAS: I understand, Mr. Zuckerman,

10:16 16 that as it relates to an issue of privilege that those

10:16 17 items are not to be gone into as a result of Judge

10:16 18 Colombo's order, and so for you to say I'll take the

10:16 19 answer, anyway, is not in keeping with what I think

10:16 20 the judge's directions are.

10:16 21 MR. ZUCKERMAN: Okay, I'm entitled to find

10:16 22 out the basis or if there's a basis for any defense or

10:16 23 affirmative defense alleged in this case, and the

10:16 24 deliberative process or the deliberative privilege or

10:16 25 whatever it may be, has been asserted in this case,

10:16 1 and so I'm entitled to find out if he has been

10:17 2 consulted on whether or -- been consulted on City

10:17 3 issues without asking about the specifics of those

10:17 4 issues unless you're going to waive that defense. Are

10:17 5 you going to waive that defense?

10:17 6 MR. THOMAS: You know what, whether I waive

10:17 7 it or not is up to the judge, but for you to ask what

10:17 8 it was that was discussed --

10:17 9 MR. ZUCKERMAN: I didn't ask that.

10:17 10 MR. THOMAS: -- under the frame of a

10:17 11 supposed defense, then I say to you that that's an

10:17 12 inappropriate question.

10:17 13 BY MR. ZUCKERMAN:

10:17 14 Q. All I asked you, Mr. Mitchell, is have you discussed

10:17 15 City business with the --

10:17 16 A. Again, I've said -- I've said to you that I believe

10:17 17 any conversations that I've had with them are

10:17 18 privileged, and now you're saying you want to know

10:17 19 whether I had a conversation. Well, I'm not -- I'm

10:17 20 missing the distinction.

10:17 21 Q. Okay. My -- you answered my question about providing

10:17 22 legal services in connection with going to the

10:17 23 Comerica box just in general. My question is whether

10:17 24 or not you've been consulted by the mayor or

10:17 25 Ms. Beatty --

10:18 1 A. I have --

10:18 2 Q. -- on other City advice, other City issues.

10:18 3 A. I have --

10:18 4 Q. It's a yes or no question.

10:18 5 A. The question is way too broad because there are things

10:18 6 that are even in a personal nature that may have

10:18 7 drifted into something else, and I'm not sure that I

10:18 8 can answer the question.

10:18 9 Q. Okay.

10:18 10 A. As you -- as you asked without going into what I

10:18 11 believe would be privileged.

10:18 12 Q. All right, let me ask it this way then. Have you ever

10:18 13 sent or received a text message from the mayor?

10:18 14 A. I don't know. To tell you the truth, I don't -- I

10:18 15 don't -- I don't believe so, but I am not 100 percent

10:18 16 certain of that.

10:18 17 Q. Do you have a text --

10:18 18 A. I'm not a texter in general.

10:18 19 Q. Okay, do you have a text messaging device?

10:18 20 A. I have.

10:18 21 Q. Okay.

10:18 22 A. Yeah.

10:18 23 Q. Do you recall sending or receiving text messages for

10:18 24 Ms. Beatty?

10:18 25 A. I don't -- I don't recall receiving or sending from

10:18 1 either, but that doesn't mean --

10:18 2 Q. I understand.

10:18 3 A. Okay. I mean I receive probably, I don't know, a

10:19 4 hundred e-mails or thereabout a day. Whether that

10:19 5 e-mails include texts or not, I'm not probably

10:19 6 sophisticated enough to know that, but I don't recall

10:19 7 ever receiving either from either.

10:19 8 Q. Okay, just for purposes of my questioning, I'm not

10:19 9 talking about e-mails, I'm only talking about text

10:19 10 messages?

10:19 11 A. See, I'm not sure. I couldn't tell you the difference

10:19 12 in my view.

10:19 13 Q. Okay.

10:19 14 A. Right, it comes up, however it comes up, I don't know

10:19 15 whether it's a text or an e-mail or what, but the --

10:19 16 the more specific answer to your question is I really

10:19 17 don't recall, and I doubt that I ever received either

10:19 18 from either.

10:19 19 Q. Okay. Thank you. Okay. Are you aware of the fact

10:20 20 that the Brown and Nelthrop case settled?

10:20 21 A. Yes.

10:20 22 Q. Okay. Were you involved at all with the negotiation

10:20 23 of that settlement?

10:20 24 A. No, sir.

10:20 25 Q. Okay. At some point after the settlement, you were

10:21 1 engaged to provide what you say are legal services; is
 10:21 2 that correct?
 10:21 3 A. I believe so.
 1 4 Q. Okay. And can you -- and that had to do with your
 10:21 5 acting as a recipient of certain documents?
 10:21 6 A. Specifically, what I was that was not the specifics of
 10:21 7 what I was engaged for. I mean that -- that came
 10:21 8 about as it came about, there was a -- you talked
 10:21 9 about the settlement of the Brown case, there --
 10:21 10 however that came about, somewhere in there, I
 10:21 11 received a designation as the person to receive
 10:22 12 documents in the exchange.
 10:22 13 Q. Okay.
 10:22 14 A. But my more specific representation really had to do
 10:22 15 with trying to ascertain what was happening and how
 10:22 16 the whole SkyTel records had been released to Mr.
 10:22 17 Stefani.
 10:22 18 Q. Okay. Let's talk about your receipt of documents
 10:22 19 first.
 10:22 20 A. All right.
 10:22 21 Q. What documents were you to receive as far as you
 10:22 22 recall?
 10:22 23 A. I -- I received red robe about the size of the one
 10:22 24 that's in front of this young lady, I'm sorry, I don't
 10:22 25 remember your name.

10:22 1 Q. Ms. Philip?
 10:22 2 A. Ms. Phillips, it was -- it had a flap over it. To be
 10:22 3 honest with you, I never opened it, and I don't really
 10:22 4 have a clue of -- well, I -- I have reasonably reason
 10:22 5 to belief what was supposed to be in it but I couldn't
 10:23 6 verify it.
 10:23 7 Q. What do you reason to belief that were in it?
 10:23 8 A. There were documents in it -- there were supposed to
 10:23 9 be documents in it relating to Ms. Beatty he a
 10:23 10 finances of some sort, and there were supposed to be
 10:23 11 documents in there relating to text messages.
 10:23 12 Q. Okay. When you say documents relating to text
 10:23 13 messages, do you mean documents relating to text
 10:23 14 messages -- text messages, themselves, or don't you
 10:23 15 really know?
 10:23 16 A. I -- I assume it might have been both.
 10:23 17 Q. Okay.
 10:23 18 A. I don't know.
 10:23 19 Q. And do you remember when you received the documents?
 10:23 20 A. I recall the date is December -- I believe it's
 10:23 21 December 6th, could be December 11th my memory's
 10:23 22 getting -- fading but it was the same day that the
 10:23 23 settlement was actually placed on the record in front
 10:23 24 of Judge Callahan.
 10:23 25 Q. Okay, and where did you receive these documents?

10:23 1 A. After the settlement concluded, met the parties over
 10:23 2 at the Comerica Bank that's directly across the
 10:23 3 street, I guess, from the City-County Building.
 10:24 4 Q. Who was there when you -- when you met the parties?
 10:24 5 A. Now, you know, I remember Mr. Stefani -- I believe Mr.
 10:24 6 Stefani's son was there. Sam McCargo was there. I
 10:24 7 don't remember if there was another young lady there
 10:24 8 but I'm not sure where she was from.
 10:24 9 Q. Okay, and then did you go to the bank?
 10:24 10 A. We met at the bank.
 10:24 11 Q. At the bank. And tell me what transpired.
 10:24 12 A. I stood in the lobby with this other young lady. Mr.
 10:24 13 McCargo and Mr. Stefani's son who I don't remember if
 10:24 14 I'd met before disappeared in the back somewhere they
 10:24 15 came back out they had some documents one was handed
 10:24 16 to me, one was handed to him and that was it.
 10:24 17 Q. Okay, and so you got this red rope?
 10:24 18 A. I got a folder, yeah.
 10:24 19 Q. Okay.
 10:24 20 A. With a -- you know what I call a red rope yes.
 10:25 21 Q. Okay and you did not open it?
 10:25 22 A. I did not open it.
 10:25 23 Q. And you never opened it?
 10:25 24 A. I never opened it.
 10:25 25 Q. What did you do with it?

10:25 1 A. I gave it to the mayor.
 10:25 2 Q. Okay, and when did you give it to the mayor?
 10:25 3 A. I believe that same day, if not that same day, the
 10:25 4 next day.
 10:25 5 Q. Do you remember where you gave these documents to the
 10:25 6 mayor?
 10:25 7 A. I believe at the Manoogian Mansion.
 10:25 8 Q. Did you make an appointment to go see him?
 10:25 9 A. I think I probably called him.
 10:25 10 Q. Okay, and when you got there, was anyone else there?
 10:25 11 A. Not that I recall.
 10:25 12 Q. Did you give the documents to the mayor in the
 10:25 13 presence of anyone else?
 10:25 14 A. Not that I recall.
 10:25 15 Q. Okay. So he didn't open the door to let you in,
 10:25 16 someone else must have?
 10:25 17 A. I'm certain that that happened.
 10:25 18 Q. Okay. And so were you led to a particular room where
 10:25 19 you gave him the documents?
 10:25 20 A. I -- I don't remember what room. I was legality into
 10:25 21 the house, I was waiting in a room, and he appeared
 10:25 22 and I handed him the documents and I said these are
 10:25 23 yours and see you later.
 10:25 24 Q. Okay. Any other conversation? I don't want the
 10:26 25 content yet, just any other conversation?

10:26 1 A. I -- no, I don't recall any, but if I did, I wouldn't
 10:26 2 be able to tell you, I believe, anyway.
 10:26 3 Q. Okay.
 10:26 4 A. I'm sure you understand why.
 10:26 5 Q. Well, I'm understanding why you would say that. I'm
 10:26 6 not necessarily going to --
 10:26 7 MR. THOMAS: Well, if you have an
 10:26 8 objection, though, you should be very clear for the
 10:26 9 record.
 10:26 10 A. Well, I believe any conversation that I had with him
 10:26 11 any communications that I had with him would be
 10:26 12 privileged.
 10:26 13 BY MR. ZUCKERMAN:
 10:26 14 Q. Right.
 10:26 15 A. But I don't recall any other than my saying here are
 10:26 16 your documents.
 10:26 17 Q. Okay, was Ms. Beatty there?
 10:26 18 A. No.
 10:26 19 Q. Okay, how long were you there?
 10:26 20 A. Ten minutes, I don't know.
 10:26 21 Q. Okay, and then did you go there with anyone else?
 10:26 22 A. Absolutely not.
 10:26 23 Q. Okay, and then you left you came by yourself, you left
 10:26 24 by yourself?
 10:26 25 A. Yes, sir.

10:26 1 Q. And basically, you were there about ten minutes?
 10:26 2 A. That's my recollection.
 10:26 3 Q. Okay. Do you know what happened to the documents
 10:26 4 after you gave them to the mayor?
 10:26 5 A. I -- I don't in particular. I mean I gave them to
 10:26 6 him. I --
 10:27 7 Q. Okay.
 10:27 8 A. I did at a later time receive them back.
 10:27 9 Q. Okay. And in what connection did you receive them
 10:27 10 back?
 10:27 11 A. Sometime after the-- or about the time there were
 10:27 12 rumblings about criminal charges, I received them, and
 10:27 13 I gave them to brother counsel, Mr. -- God, I'm not
 10:27 14 going to think of his name, I'll come back to it but
 10:27 15 gave it to another lawyer who was working on the case,
 10:27 16 as well.
 10:27 17 MR. GOODMAN: I couldn't -- I'm sorry, I --
 10:27 18 A. I gave it to another lawyer who was working on the
 10:27 19 case, as well, and I'm feeling terrible because I
 10:27 20 can't remember his name now, Bill Moffitt, thank you,
 10:27 21 yeah.
 10:27 22 BY MR. ZUCKERMAN:
 10:27 23 Q. Bill Moffitt?
 10:27 24 A. Yes.
 10:27 25 Q. When did you get the documents back --

10:27 1 A. Well, I don't really recall, it was sometime around
 10:28 2 the time that there were speculation about Ms. Worthy
 10:28 3 bringing charges.
 10:28 4 Q. Okay, so this is before she brought charges?
 10:28 5 A. I believe it was, I'm certain it was.
 10:28 6 Q. Okay, how did you know to go to pick these documents
 10:28 7 up or were they delivered to you?
 10:28 8 MR. THOMAS: Objection to the form of the
 10:28 9 question.
 10:28 10 Q. How did you get the documents?
 10:28 11 A. I believe I picked them up.
 10:28 12 Q. How did you know to do that?
 10:28 13 MR. THOMAS: And again, the form of the
 10:28 14 question may assume a privileged communication,
 10:28 15 objection.
 10:28 16 A. How did I know --
 10:28 17 BY MR. ZUCKERMAN:
 10:28 18 Q. Did someone call you?
 10:28 19 A. No, I believe I made the call, and I believe I
 10:28 20 requested to be able to pick them up.
 10:28 21 Q. Okay.
 10:28 22 A. Because --
 10:28 23 MR. THOMAS: Objection as to work product.
 10:28 24 A. Yes.
 10:28 25 MR. GOODMAN: Well, hold on a minute.

10:28 1 MR. THOMAS: His thoughts, his
 10:28 2 deliberations, his process, and the way that he was
 10:28 3 acting as a result of his analysis of the situation,
 10:29 4 in my view, is work product.
 10:29 5 MR. GOODMAN: Yeah, but next time try not
 10:29 6 to cut me off.
 10:29 7 MR. THOMAS: Well, I --
 10:29 8 MR. GOODMAN: You just wanted to elaborate
 10:29 9 on your objection, I understand.
 10:29 10 Let me just say this, I don't think that's
 10:29 11 an objection that you have any standing to raise.
 10:29 12 This is a witness who is an attorney and is not
 10:29 13 represented by an attorney today here and if work
 10:29 14 product is involved, I think that --
 10:29 15 A. Well, that's why --
 10:29 16 MR. GOODMAN: -- ^ objections.
 10:29 17 A. -- Mr. Goodman, I don't mean to cut you off, but
 10:29 18 that's why I hesitated in my -- in my answer because I
 10:29 19 started to think that this may be getting into the
 10:29 20 work product area, but suffice it to say I delivered
 10:29 21 the documents to Mr. Moffitt who was a lawyer on the
 10:29 22 team, as well.
 10:29 23 BY MR. ZUCKERMAN:
 10:29 24 Q. Okay, do you remember when you picked them up?
 10:29 25 A. I really don't. I don't remember at all.

10:29 1 Q. Okay, and I'm not clear, let me just ask this one more
 10:29 2 time, did you pick them up or were they delivered?
 10:29 3 A. **I'm certain I picked them up.**
 9 4 Q. Okay and you picked them up at the amongst?
 10:29 5 A. **I believe so.**
 10:29 6 Q. Do you have any idea whether the documents you picked
 10:30 7 up were the exact documents you dropped off?
 10:30 8 A. **I couldn't tell you because I never looked at the**
 10:30 9 **envelope.**
 10:30 10 Q. I --
 10:30 11 A. **Either time.**
 10:30 12 Q. I understand and did anyone accompany you to pick up
 10:30 13 the documents?
 10:30 14 A. **No, sir.**
 10:30 15 Q. Okay, and did anyone accompany you when -- I'm sorry
 10:30 16 did Mr. Moffitt pick them up or did you drop them off?
 10:30 17 A. **I gave them to Mr. Moffitt.**
 10:30 18 Q. Was anyone there at the time?
 10:30 19 A. **Mr. Moffitt.**
 10:30 20 Q. Other than Mr. Moffitt?
 10:30 21 A. **No.**
 10:30 22 Q. Okay. Have you seen the documents since?
 10:30 23 A. **I have not.**
 10:30 24 Q. Do you know where they are?
 10:30 25 A. **I do not.**

10:30 1 Q. Okay. And Mr. Moffitt is a Detroit lawyer?
 10:30 2 A. **No, he's a lawyer in Alexandria, Virginia.**
 10:30 3 Q. Okay, and was he in Detroit when you gave the
 10:30 4 documents to him?
 10:30 5 A. **No, he was not.**
 10:30 6 Q. You somehow got yourself to Virginia or you --
 10:30 7 A. **I did.**
 10:30 8 Q. -- or was it somewhere else?
 10:30 9 A. **I did go to Virginia.**
 10:30 10 Q. Okay, and what is the name of Mr. Moffitt's firm?
 10:30 11 A. **Moffitt -- Moffitt & Broadnax or Broadnax & Moffitt, I**
 10:30 12 **don't recall which way it is. It's M-o-f-f-i-t or**
 10:31 13 **maybe two t's and Broadnax, B-r-o-a-d-n-a-x.**
 10:31 14 Q. And just one more time, I'm sorry, did you tell me
 10:31 15 when you did this or did you tell me you don't
 10:31 16 remember?
 10:31 17 A. **I don't recall, it was sometime prior to Ms. Worthy's**
 10:31 18 **bringing charges.**
 10:31 19 Q. Okay.
 10:31 20 MR. THOMAS: You dropped your voice, I
 10:31 21 didn't hear the last part, Ms. Worthy what?
 10:31 22 A. **Bringing charges or rumblings about her going to bring**
 10:31 23 **charges.**
 10:31 24 BY MR. ZUCKERMAN:
 10:31 25 Q. Were the documents that you picked up in the same

10:31 1 container, red rope envelopes that you --
 10:31 2 A. **They were.**
 10:31 3 Q. -- dropped them off in?
 10:31 4 A. **Yeah.**
 10:31 5 Q. Okay. Was your trip to Virginia for the sole purpose
 10:32 6 of dropping off the documents?
 10:32 7 A. **No.**
 10:32 8 Q. Okay, and were you there for other legal reasons
 10:32 9 relating to --
 10:32 10 A. **I was there as an attorney meeting with another**
 10:32 11 **attorney on the case.**
 10:32 12 Q. Okay. Do you know what the Stefani fee, f-e-e,
 10:32 13 motion or brief is?
 10:32 14 A. **No. Well, I know it -- it would be hard not to -- to**
 10:32 15 **have been involved in this case to any extent and not**
 10:32 16 **have some idea what it is.**
 10:32 17 Q. Okay.
 10:32 18 A. **I will tell you this, I have never seen it.**
 10:32 19 Q. Okay, and you've never possessed it either?
 10:32 20 A. **Never possessed it.**
 10:32 21 Q. Do you know where it is?
 10:32 22 A. **I have -- I never seen it, I never possessed it how to**
 10:32 23 **would I know where it is.**
 10:32 24 Q. Someone tells you?
 10:32 25 A. **No, sir, I don't know.**

10:32 1 Q. Okay. Let me just ask you this. This is one of these
 10:33 2 questions that may not make any sense along with the
 10:33 3 rest of my questions?
 10:33 4 A. **Everything makes sense Mr. --**
 10:33 5 Q. There is a June 26th, 2000 memorandum from the City of
 10:33 6 Detroit that's entitled directive for the use of City
 10:33 7 of Detroit electronic communications system. And I'm
 10:33 8 going to show this to you, I'll mark it as Exhibit 2
 10:33 9 for your dep?
 10:33 10 MARKED BY THE REPORTER:
 10:33 11 DEPOSITION EXHIBIT NUMBER 2
 10:33 12 10:33 a.m.
 10:33 13 A. **Okay.**
 10:33 14 BY MR. ZUCKERMAN:
 10:33 15 Q. Have you ever seen it before?
 10:33 16 A. **I have not.**
 10:33 17 Q. Do you know anything about how or why it was
 10:33 18 promulgated?
 10:33 19 A. **I do not.**
 10:33 20 Q. Do you know who authored it?
 10:33 21 A. **I do not.**
 10:33 22 Q. Do you know who signed it?
 10:33 23 A. **I know nothing about this document, never seen it**
 10:34 24 **before.**
 10:34 25 Q. Okay, and no one's ever discussed it with you either?

10:34 1 **A. Not to my knowledge.**
 10:34 2 **Q.** All right. You can keep it in front of you if you
 10:34 3 like.
 10:34 4 **MR. THOMAS:** I'm never betting with you
 10:34 5 again.
 10:34 6 **MR. ZUCKERMAN:** Pardon?
 10:34 7 **MR. THOMAS:** I'm never betting with you
 10:34 8 again.
 10:34 9 **BY MR. ZUCKERMAN:**
 10:34 10 **Q.** Mr. Mitchell, did you ever receive documents from Mr.
 10:34 11 Stefani other than the documents from the Comerica
 10:34 12 safety deposit box visit?
 10:34 13 **A. I don't recall that I did.**
 10:34 14 **Q.** Okay. Just see if I can refresh your recollection,
 10:34 15 Mr. Stefani says that he either gave or sent to Mr.
 10:35 16 Mitchell a Fed. Ex. envelope in which he, Mr. Stefani,
 10:35 17 had received the text message -- the messages from
 10:35 18 SkyTel, do you recall anything like that?
 10:35 19 **A. I don't recall seeing it, I'm not -- I can't tell you**
 10:35 20 **that he didn't send it to my office, and -- and**
 10:35 21 **somehow got filed or put someplace, I don't recall**
 10:35 22 **seeing it.**
 10:35 23 **Q.** Okay, you don't recall -- you don't have any
 10:35 24 recollection of Mr. Stefani sending you such a thing?
 10:35 25 **A. I really don't.**

10:35 1 **Q.** Okay.
 10:35 2 **A. I'm not -- I'm not suggesting that he didn't, but I --**
 10:35 3 **whatever it was, if he sent me something, it was in my**
 10:35 4 **mind at least not something of any moment.**
 10:35 5 **Q.** Okay. And if you had still possessed it, would you
 10:35 6 have considered -- well, you don't have any
 10:35 7 understanding, though, as you sit here, what he might
 10:35 8 have sent you, do you?
 10:35 9 **A. I don't remember, frankly, receiving anything from Mr.**
 10:36 10 **Stefani. Now, you know, I just don't.**
 10:36 11 **Q.** Okay. And when I say Mr. Stefani, I mean not only him
 10:36 12 personally but anyone in his law office?
 10:36 13 **A. I -- I don't recall.**
 10:36 14 **Q.** Okay.
 10:36 15 **A. What was it supposed to have been.**
 10:36 16 **Q.** Well, supposedly a Fed. Ex. package with messages in
 10:36 17 them?
 10:36 18 **A. No. I -- no. I never saw that.**
 10:36 19 **Q.** Okay.
 10:36 20 **A. With messages in them?**
 10:36 21 **Q.** Yes. Well, text messages, I assume, but the word
 10:36 22 messages is what was used.
 10:36 23 **A. Mr. Stefani has testified under oath that he sent me**
 10:36 24 **text messages.**
 10:36 25 **Q.** The word is messages, we believe. It's a Fed. Ex.

10:36 1 envelope in which he had received --
 10:36 2 **A. He sent me the envelope, is that what you're saying.**
 10:36 3 **Q.** Yes.
 10:36 4 **A. Maybe he did, I don't know.**
 10:36 5 **Q.** Okay.
 10:37 6 **A. If -- the way the process works in my office, I**
 10:37 7 **suppose if he had sent an envelope I'm not even sure**
 10:37 8 **that my assistant would know what to do with it but.**
 10:37 9 **Q.** In any event you don't have any clear recollection?
 10:37 10 **A. I don't have any recollection of it, no.**
 10:37 11 **Q.** Okay. I'm going to mark as Exhibit 3 which we've
 10:37 12 Bates stamped as FREEP 701 through and including 709,
 10:37 13 the documents you previously handed to me.
 10:37 14 **A. Okay.**
 10:37 15 **Q.** And this will be Exhibit 3 for your dep. And I'm just
 10:37 16 going to go through these with you and ask some
 10:37 17 questions.
 10:37 18 **MR. THOMAS:** Richard, are you going to say
 10:37 19 the first letter is 3, or are you going to just do --
 10:37 20 this would be like a joint Exhibit 3.
 10:37 21 **MR. ZUCKERMAN:** It's a collective exhibit
 10:37 22 but I'll identify each page by Bates number.
 10:37 23 **MR. THOMAS:** All right.
 10:37 24 **MR. ZUCKERMAN:** The Free Press -- the FREEP
 10:37 25 Bates number, not the Bates number that Mr. Mitchell

10:38 1 put on it.
 10:38 2 **BY MR. ZUCKERMAN:**
 10:38 3 **Q.** At some point at least prior to 2007 which is the date
 10:38 4 on the first letter in this packet, FREEP 701, you had
 10:38 5 apparently been retained to contact SkyTel for some
 10:38 6 purpose; is that correct?
 10:38 7 **A. I had been retained to try to find out what happened**
 10:38 8 **here.**
 10:38 9 **Q.** Okay. And you --
 10:38 10 **A. Involving SkyTel and the records that were produced to**
 10:38 11 **Mr. Stefani.**
 10:38 12 **Q.** Okay, and so you had clients; is that correct?
 10:38 13 **A. I did.**
 10:38 14 **Q.** And those were who?
 10:38 15 **A. The mayor and Ms. Beatty.**
 10:39 16 **Q.** Okay.
 10:39 17 **A. At the time.**
 10:39 18 **Q.** And so you wrote this November 2nd, 2007 letter to
 10:39 19 SkyTel as their lawyer; is that correct?
 10:39 20 **A. Yeah, and -- in a very owe fish us manner, that's**
 10:39 21 **correct. Let me tell you, maybe it's easier this way.**
 10:39 22 **Well, I guess that's -- that's the correct way to put**
 10:39 23 **it.**
 10:39 24 **Q.** Okay. Okay, let's look at FREEP 702 which is your
 10:39 25 letter to SkyTel dated November 6, 2007?

10:39 1 A. Mm-hmm.
 10:39 2 Q. The second paragraph.
 10:39 3 MR. GOODMAN: I can't hear you.
 9 4 MR. ZUCKERMAN: I'm sorry, the November
 10:39 5 6th, 2007 letter.
 10:39 6 MR. GOODMAN: All right, thank you.
 10:39 7 MR. ZUCKERMAN: FREEP 702. It says I am
 10:40 8 seeking answers to several questions regarding these
 10:40 9 matters including most particularly requirements for
 10:40 10 and methods of destruction of this governmental
 10:40 11 sensitive data. What other questions were you seeking
 10:40 12 answers to from SkyTel.
 10:40 13 A. That's a long -- I was actually trying to find out
 10:40 14 their policies with regard -- their procedures and
 10:40 15 policies with regard to handling data requests for
 10:40 16 dealing with production requests, for dealing with
 10:40 17 subpoenas, etcetera. I was trying to find out their
 10:40 18 document retention policy, I was trying to find out a
 10:40 19 number of things about how they handled requests of
 10:40 20 the sort of Mr. Stefani.
 10:40 21 BY MR. ZUCKERMAN:
 10:40 22 Q. Okay, why -- why were you interested in methods of
 10:40 23 destruction?
 10:40 24 A. Well, that actually came as a result of conversations
 10:40 25 that I had with Ms. Mullins before these letters went

10:41 1 out, and my conversations with her, I was somewhat
 10:41 2 distraught in finding out one, that they had, in fact,
 10:41 3 given these documents or produced these documents to
 10:41 4 Mr. Stefani in light of the fact that they had been on
 10:41 5 notice of protective order in this case for over three
 10:41 6 years. In fact, there were two protective orders, as
 10:41 7 I -- as I understood later, after this -- after my
 10:41 8 initial conversations with her.
 10:41 9 And talking about how it is that that could
 10:41 10 have happened gave me great moment for pause. I
 10:41 11 suggested that maybe I needed to come and talk to her
 10:41 12 so that I could have a better understanding of what
 10:41 13 their system did, how they did this and -- and what
 10:42 14 safeguards they had in place. Initially to start off
 10:42 15 kind of as a very casual discussion, because I really
 10:42 16 did not believe and -- that Mr. Stefani had been given
 10:42 17 these records. I just -- there were two Court orders
 10:42 18 saying that they only could go to the Court, SkyTel
 10:42 19 had been served to my knowledge with both of them.
 10:42 20 They couldn't find them, which was a concern, which is
 10:42 21 why I had to deliver them to her.
 10:42 22 Q. When you say they couldn't find them, you mean the
 10:42 23 protective orders?
 10:42 24 A. Yes.
 10:42 25 Q. Okay.

10:42 1 A. So that gave concern about how they handled the
 10:42 2 process, what their -- what their procedures were,
 10:42 3 etcetera, etcetera. And my next question was okay,
 10:42 4 these documents are -- or this data is over, at the
 10:43 5 time, five -- some of it over five years old, five,
 10:43 6 six years old. What is your document destruction
 10:43 7 policy? I, you know, assumed that this company like
 10:43 8 most other companies had one only to find out at least
 10:43 9 from Ms. Mullins that they had no document destruction
 10:43 10 policy which also gave me some cause for some concern,
 10:43 11 so...
 10:43 12 Q. Okay. What did she say to you?
 10:43 13 A. What did she say to me in regards to --
 10:43 14 Q. In response to your concerns.
 10:43 15 A. Well, we had some interesting conversation because we
 10:43 16 got into this whole conversation about who the
 10:43 17 documents -- who this data actually belonged to, and I
 10:43 18 suppose I proposed some hypotheticals to the extent
 10:43 19 that we talked earlier about my having a pager, I
 10:44 20 assumed that communications, particularly those that
 10:44 21 are printed that are held in their system actually
 10:44 22 belonged to me, that was -- that's -- I was -- I don't
 10:44 23 know whether I -- I still don't know whether I'm
 10:44 24 correct in that thought or not, but I -- that's what
 10:44 25 we talked about.

10:44 1 She took the position that no, it belonged
 10:44 2 to them, and I said well, you know, let's assume that
 10:44 3 I don't want -- I want -- I deleted it, I wanted to
 10:44 4 delete it, I did not want it to remain in the
 10:44 5 universe, are you suggesting that me as a customer I
 10:44 6 don't have the right to request that it be deleted
 10:44 7 from your system? They then gave me this long
 10:44 8 discussion about how their system works, how they
 10:45 9 maintained this data for -- basically for their own
 10:45 10 business purposes that they needed to know what kind
 10:45 11 of volume their system could handle and how the text
 10:45 12 messages came in. They came in in a fashion where
 10:45 13 they weren't in order, they came in randomly and
 10:45 14 something about how their -- they needed to be able to
 10:45 15 evaluate their system so they maintained this data.
 10:45 16 We got into discussions about under what
 10:45 17 circumstances and what they do to -- I -- you know, at
 10:45 18 that point, I was really giving some thought to suing
 10:45 19 SkyTel and I think I actually told Ms. Mullins that
 10:45 20 because I thought what they were doing just didn't
 10:45 21 sound right.
 10:45 22 Q. But for whatever reason, you elected not to sue them
 10:45 23 at least not through today?
 10:45 24 A. Because at the time -- no suit has been filed.
 10:46 25 Q. Correct.

10:46 1 **A. If that's your question. But at the time, I was**
 10:46 2 **really concerned about they had in my opinion made a**
 10:46 3 **-- a drastic error and mistake in producing these**
 10:46 4 **records to Mr. Stefani, and my immediate concern was**
 10:46 5 **to assure that they didn't make that mistake again. I**
 10:46 6 **had every reason -- and my biggest concern, actually,**
 10:46 7 **was that this information was going to -- to be the**
 10:46 8 **subject of what exactly it has become, the newspapers.**
 10:46 9 **Q.** Did you ask them to destroy any documents that they --
 10:46 10 strike that.
 10:46 11 Did you ask them to destroy any retained
 10:46 12 copies or retained electronic files of text messages
 10:46 13 of the mayor?
 10:46 14 **A. I sought to know what the destruction policy was and**
 10:46 15 **what ability there was to destroy the records, yes.**
 10:46 16 **Q.** But did you ask them to destroy them?
 10:47 17 **A. I don't know -- maybe I did. What I was trying to do**
 10:47 18 **was find out whether it could be done, whether they**
 10:47 19 **had a policy with respect to it, and if it was within**
 10:47 20 **the customer's right to make that request. That's**
 10:47 21 **really where I was going, I think.**
 10:47 22 **Q.** Okay. And did you make -- did you ask them to destroy
 10:47 23 any retained any electronic files or paper copies of
 10:47 24 text messages regarding Ms. Beatty?
 10:47 25 **A. We were -- I was talking in general, I think with**

10:47 1 **respect to -- I mean there was another -- there was**
 10:47 2 **another concern. The -- the request for data by Mr.**
 10:47 3 **Stefani was as to Ms. Beatty's records, but, yet, what**
 10:47 4 **was produced was not only Ms. Beatty's records but**
 10:47 5 **conversations of or text written conversations of many**
 10:48 6 **other people. I wanted to understand how that was the**
 10:48 7 **case.**
 10:48 8 **So maybe I lost your question, but I -- I**
 10:48 9 **had a lot of concerns about what SkyTel was doing, how**
 10:48 10 **they did it, why they didn't give notice to anybody,**
 10:48 11 **there were a whole lot of issues with respect to this**
 10:48 12 **company. I think still remain.**
 10:48 13 **Q.** I guess my question, I had two discreet questions.
 10:48 14 **A. Okay.**
 10:48 15 **Q.** I'll put them together but we can split them up if
 10:48 16 it's easier for you?
 10:48 17 **A. Maybe.**
 10:48 18 **Q.** Did you ask SkyTel to destroy either the electronic
 10:48 19 files of text messages or retain paper copies of text
 10:48 20 messages of the mayor?
 10:48 21 **A. I asked about the destruction of documents of -- of**
 10:48 22 **this data in their system.**
 10:48 23 **Q.** Okay. I understand your answer, your answer is you
 10:48 24 asked about the process. I'm asking if you asked them
 10:48 25 to destroy the electronic piles files or the retained

10:48 1 copies of any --
 10:49 2 **A. I just -- you know, I don't know if I said that,**
 10:49 3 **whether I said that I was really trying to, I most --**
 10:49 4 **in my letter on that you identified FREEP 702, I'm**
 10:49 5 **seeking answers to several questions regarding these**
 10:49 6 **matters including most particularly requirements for**
 10:49 7 **and the methods of destruction of this data. I wanted**
 10:49 8 **to know like I said, what their document destruction**
 10:49 9 **policy was, was it within the customer's right to**
 10:49 10 **request the destruction of this document, I don't know**
 10:49 11 **that -- that I specifically asked them to be**
 10:49 12 **destroyed, but certainly, I was looking to see what --**
 10:49 13 **what the course for that destruction to happen, what**
 10:49 14 **it would be.**
 10:49 15 **Q.** Okay. And the same question with regard to Ms.
 10:49 16 Beatty, did you -- did you ask SkyTel to destroy the
 10:49 17 electronic files or any retained paper copies of
 10:49 18 any -- of Ms. Beatty --
 10:49 19 **A. I think my answer is the same, I don't know that I**
 10:49 20 **specifically asked that. I know that I was seeking to**
 10:49 21 **understand what the process would be, and if that**
 10:50 22 **could be done.**
 10:50 23 **Q.** Okay, in your letter on the paragraph you just read --
 10:50 24 **A. Yes.**
 10:50 25 **Q.** -- you're asking about the methods of destruction of

10:50 1 this governmental sensitive data?
 10:50 2 **A. Yes.**
 10:50 3 **Q.** You see the word governmental?
 10:50 4 **A. Yes.**
 10:50 5 **Q.** Why did you use the word governmental?
 10:50 6 **A. Because I -- for whatever reason, I believe that**
 10:50 7 **this -- this information was between City of Detroit**
 10:50 8 **officials. I understood that in this chain was**
 10:50 9 **discussions with the legal department and -- and**
 10:50 10 **others, discussions about business matters, and not**
 10:50 11 **only that, but personal matters, as well. But I --**
 10:50 12 **but the -- one of the concerns, I believe, was the**
 10:50 13 **fact that it involved discussions about City business.**
 10:50 14 **Q.** Okay, if you look at FREEP 706, it's a November 27th,
 10:51 15 2000 letter?
 10:51 16 **A. Yes, sir.**
 10:51 17 **Q.** From you to SkyTel?
 10:51 18 **A. Yes, sir.**
 10:51 19 **Q.** Paragraph 3 of that letter says as we discussed
 10:51 20 previously, I believe the content of those
 10:51 21 transmissions are the property of the customer and as
 10:51 22 such must be deemed or otherwise disabled upon their
 10:51 23 request.
 10:51 24 **A. Mm-hmm.**
 10:51 25 **Q.** Did you make any such requests to SkyTel?

10:51 1 **A.** You know.
 10:51 2 **Q.** On behalf of the mayor?
 10:51 3 **A.** I don't recall that I did. Again, I was trying to
 1 4 find out what the process was for -- for either
 10:51 5 destruction by virtue of their own document
 10:51 6 destruction policy which I understand they didn't,
 10:51 7 whether there was a possibility for destruction by
 10:51 8 request of the customer, whether this -- this
 10:51 9 information, whether the customer's privacy in their
 10:51 10 own efforts to maintain this stuff, whatever business
 10:51 11 reasons they had, had anything -- had any
 10:52 12 consideration.
 10:52 13 Again, I don't know that -- I certainly
 10:52 14 looking towards it being destroyed, I don't know that
 10:52 15 I made the actual request for it, and I'm not sure
 10:52 16 that I -- it seems to me that a part of the concern in
 10:52 17 my question -- in responding to your question is I
 10:52 18 understood that some of this information, a specific
 10:52 19 request for -- for deletion of this information may
 10:52 20 have had to come from the corporation counsel. And I
 10:52 21 wasn't sure about whether or not that was the case or
 10:52 22 whether specific individuals like the mayor or Ms.
 10:52 23 Beatty or others who had been assigned phones could
 10:52 24 make that request. So this was -- this was kind of
 10:52 25 early on and I was kind of feeling my way through

10:53 1 this.
 10:53 2 Somewhere in this, I found out about this
 10:53 3 Stewart Communications Act, and that's when I was
 10:53 4 really very, very concerned about SkyTel, but...
 10:53 5 **Q.** Okay, I have to ask you the same question I asked
 10:53 6 about the mayor, I have to ask you about Ms. Beatty,
 10:53 7 did you make any request on Ms. Beatty's behalf in
 10:53 8 connection with--
 10:53 9 **A.** I think my answer is the same.
 10:53 10 **Q.** Same --
 10:53 11 **A.** -- I don't recall making a specific request to destroy
 10:53 12 these records, I think my inquiry was about what the
 10:53 13 process could be, certainly -- certainly I was looking
 10:53 14 towards -- towards that end, but I don't know that I
 10:53 15 ever made a specific request.
 10:53 16 **Q.** Just so the record's clear, I was asking about your
 10:53 17 language in paragraph 3 of FREEP 706 and my question
 10:53 18 about Ms. Beatty just tracked the prior question
 10:53 19 regarding the mayor?
 10:53 20 **A.** Sure.
 10:53 21 **Q.** To which you gave a lengthy answer.
 10:54 22 The document I just looked at, FREEP 706 --
 10:54 23 **A.** Yes.
 10:54 24 **Q.** -- the fourth paragraph says I am providing you with
 10:54 25 a list of accounts to be flagged at this point, see

10:54 1 enclosure, that's in the fourth paragraph?
 10:54 2 **A.** Yes.
 10:54 3 **Q.** Unless it's out of order here, I don't see an
 10:54 4 enclosure that follows the end of this particular
 10:54 5 November 27th, 2007 memo.
 10:54 6 **A.** Oh, that --
 10:54 7 **Q.** Is that --
 10:54 8 **A.** That is -- okay. In trying to figure out in the
 10:54 9 interim before we could figure out whose rights
 10:54 10 prevailed with respect to these documents, I was
 10:55 11 looking for some way to assure that their process,
 10:55 12 whatever process they had, would not allow what had
 10:55 13 happened to happen again. Not -- not only at this
 10:55 14 point was I -- I satisfied that -- that SkyTel had
 10:55 15 provided Mr. Stefani records to which he was not
 10:55 16 entitled and were in violation of Court orders, I was
 10:55 17 also starting to process that they were in violation
 10:55 18 of federal law in having done so, but my -- my
 10:55 19 immediate concern was trying to make sure that they
 10:55 20 didn't do this again, so -- and I -- our
 10:55 21 conversations, my conversations with Ms. Mullins, she
 10:55 22 came up with this idea that, well, you know, they
 10:55 23 could provide the special thing for us where they
 10:56 24 would, in fact, flag the accounts and -- and to notify
 10:56 25 us if there were any requests for documents in a civil

10:56 1 matter relating to any of the City accounts that were
 10:56 2 listed actually in her letter which is FREEP 705,
 10:56 3 those accounts.
 10:56 4 **Q.** Okay, so the accounts that you're referencing in 706
 10:56 5 are the accounts listed in FREEP 705?
 10:56 6 **A.** Right, and what I think happened was some of those
 10:56 7 accounts were simply noted as ones that I wanted her
 10:56 8 to -- to flag at that time.
 10:56 9 **Q.** Okay. You -- in some of your answers, you've
 10:57 10 indicated that you thought and I'm paraphrasing --
 10:57 11 **A.** Yes.
 10:57 12 **Q.** -- you correct me if I'm wrong, that the text messages
 10:57 13 that you were concerned of contained City business or
 10:57 14 personal type information is; is that a fair
 10:57 15 statement?
 10:57 16 **A.** I think I -- my assumption was that it probably
 10:57 17 contained both.
 10:57 18 **Q.** Okay. How did you come to that conclusion?
 10:57 19 **A.** Well, you know, I -- this is -- this is a cell phone
 10:57 20 that I have that I believe has the ability to send
 10:57 21 messages. I send messages on it both of a business
 10:57 22 nature and of a personal nature and I assume that
 10:57 23 everybody else pretty much does the same.
 10:57 24 **Q.** Okay, so you -- you presumed because you understood
 10:57 25 the mayor and Christine Beatty to have a SkyTel text

10:57 1 messaging device that text messages sent or received
 10:57 2 by them were either City or personal business?
 10:57 3 **A. By everyone who had a phone, but certainly by those**
 7 4 **people, sure.**
 10:57 5 **Q.** Okay. It's --
 10:57 6 **A. I mean it was just -- whether I'm right or wrong it**
 10:58 7 **was kind of a natural assumption that hey, you know,**
 10:58 8 **people use these phones not just for business purposes**
 10:58 9 **which I'm sure there's a lot of that, but they also**
 10:58 10 **use them to, you know, I talk to my spouse, I talk to**
 10:58 11 **my kids, I talk to my friends sometimes or send**
 10:58 12 **messages or receive messages from them on the same**
 10:58 13 **instrument.**
 10:58 14 **Q.** Okay, what I'm trying to get at is you didn't read any
 10:58 15 text message --
 10:58 16 **A. No.**
 10:58 17 **Q.** -- to come to that conclusion? And did anyone tell
 10:58 18 you that the text messages sent or received by the
 10:58 19 mayor or Christine Beatty were, in fact, their text
 10:58 20 messages?
 10:58 21 **A. No, I don't think I ever had that conversation.**
 10:58 22 **What -- what I do recall is some -- I think perhaps I**
 10:58 23 **read -- I don't know, I think I read a motion or**
 10:58 24 **something with regard to the protective order that**
 10:59 25 **indicated that there was -- there was governmental**

10:59 1 **communication and sensitive -- of a sensitive nature.**
 10:59 2 **Q.** Okay.
 10:59 3 **A. When I -- when I got the protective order that I sent**
 10:59 4 **to her, I think I read the motion that went to it or**
 10:59 5 **something. I think that's where that language comes**
 10:59 6 **from.**
 10:59 7 **Q.** Can I go back to FREEP 701 --
 10:59 8 **A. Sure.**
 10:59 9 **Q.** -- the first letter? The second paragraph contains
 10:59 10 the following sentence: This letter confirms our
 10:59 11 discussions and my agreement to provide you with a
 10:59 12 copy of the protective order originally sent to
 10:59 13 Willard Marsden in August 2004, and to obtain specific
 10:59 14 requests for destruction to these sensitive and
 10:59 15 privileged records.
 10:59 16 **A. Mm-hmm.**
 10:59 17 **Q.** Do you see that?
 10:59 18 **A. Yes.**
 10:59 19 **Q.** Can you explain what you meant by the phrase --
 10:59 20 obtain?
 10:59 21 **A. To obtain.**
 11:00 22 **Q.** To obtain -- yes?
 11:00 23 **A. Well, because again, I didn't know what the process**
 11:00 24 **was. I didn't -- I didn't know whether they had a**
 11:00 25 **document destruction policy, what it was, what the**

11:00 1 **nature of it was, I didn't know whether they had a**
 11:00 2 **procedure for clients to request destruction of their**
 11:00 3 **data, and I didn't know whether I had any authority to**
 11:00 4 **make these requests because I didn't know whether they**
 11:00 5 **were phones that -- whether the City had to do it or**
 11:00 6 **whether individuals had the ability to do it.**
 11:00 7 **Q.** Okay. Will you turn to page -- the last page of this
 11:00 8 collective exhibit which is FREEP 709.
 11:00 9 **A. 709. Yes.**
 11:00 10 **Q.** And that you're asking SkyTel to provide you with
 11:00 11 certain things?
 11:00 12 **A. Yes.**
 11:00 13 **Q.** Did you -- did SkyTel comply with that?
 11:00 14 **A. No.**
 11:00 15 **Q.** Okay.
 11:00 16 **A. I think SkyTel doesn't want to have anymore**
 11:01 17 **discussions at this point. And so that we can correct**
 11:01 18 **the reference -- the record from earlier, Moffitt is**
 11:01 19 **spelled M-o-f-f-i-t and Broadnax is B-r-o-d-n-a-x**
 11:01 20 **(sic), and it's LTD.**
 11:01 21 **Q.** Are you in association with them, because I noticed
 11:01 22 this -- this letter to SkyTel that I've referenced?
 11:01 23 **A. Yes.**
 11:01 24 **Q.** At 709 is signed by you -- oh, it's a joint --
 11:01 25 **A. Yes.**

11:01 1 **Q.** -- letter by you and Mr. Moffitt?
 11:01 2 **A. That's correct.**
 11:01 3 **Q.** Okay. Do you know who Mr. Moffitt was representing in
 11:01 4 connection with this letter, other than the mayor
 11:01 5 because he signed jointly on behalf of the mayor?
 11:01 6 **A. Mr. Moffitt, I believe, was retained by me.**
 11:01 7 **Q.** Not Ms. Beatty as far as you know?
 11:01 8 **A. As far as I know, not Ms. Beatty.**
 11:01 9 **Q.** Okay. Do you know if Mr. Moffitt is still on the case
 11:02 10 as you've referred to it before?
 11:02 11 **A. I do not.**
 11:02 12 **Q.** Okay. Now, in connection with your efforts to
 11:02 13 understand the -- the process by which SkyTel could or
 11:02 14 could not or would or would not destroy, delete or
 11:02 15 otherwise get rid of text messages?
 11:02 16 **A. Mm-hmm.**
 11:02 17 **Q.** Did you understand the text messages that you were
 11:02 18 talking about to be those of the mayor and Ms. Beatty?
 11:02 19 **A. I didn't know -- I -- your question is -- is difficult**
 11:02 20 **to answer in this -- only in this way. The -- the**
 11:03 21 **document requests that they had responded to, as I**
 11:03 22 **understood it, was a request for documents or data**
 11:03 23 **relating to Ms. Beatty. What was produced as I**
 11:03 24 **understand it was something much broader than that,**
 11:03 25 **and that included not only conversations with the**

11:03 1 mayor but many other people. So I was really trying
 11:03 2 to understand all of that, why if they requested
 11:03 3 information about Ms. Beatty's text messages,
 11:03 4 information relating to others appears, and again, I
 11:03 5 use my -- myself kind of as a sounding board. You
 11:03 6 know, suppose -- and I don't recall that I ever did, I
 11:03 7 had had communications with Ms. Beatty, would my
 11:03 8 communications then be subject to this and then be a
 11:03 9 part of this?

11:03 10 And if so would I have had to have made a
 11:04 11 specific request to SkyTel to have my records of this
 11:04 12 deleted? So it was -- it was very complicated, Mr.
 11:04 13 Zuckerman, at the time, and I'm -- and I was really
 11:04 14 just trying to understand how to go about protecting
 11:04 15 the privacy interests of -- of certainly the mayor and
 11:04 16 Ms. Beatty, but in relation to -- to the fact that
 11:04 17 this -- these were -- there were an account -- there
 11:04 18 were accounts for several other phones really trying
 11:04 19 to ascertain whether the City in itself had to do
 11:04 20 something specific to have this data eliminated.

11:04 21 Q. But -- but you understood that the text messages that
 11:04 22 you were talking to SkyTel about?

11:04 23 A. Yes.

11:04 24 Q. Were text messages of at least the mayor and Ms.
 11:04 25 Beatty?

11:04 1 A. I -- I'm not sure that I understood it to be limited
 11:05 2 to that.

11:05 3 Q. At least the mayor and Ms. Beatty?

11:05 4 A. At least, yeah.

11:05 5 Q. Did you do any preparation for today's deposition?

11:05 6 A. No.

11:05 7 Q. Okay. Did you meet with anyone in advance of today's
 11:05 8 deposition to discuss the deposition?

11:05 9 A. I have met with several people the fact that I was
 11:05 10 going to be deposed has been both kind of a joke and a
 11:05 11 -- but in terms of preparation, in terms of prepping
 11:05 12 for giving the answers or something like that, the
 11:05 13 answer is no.

11:05 14 Q. Okay, did you meet with anyone in this room other than
 11:05 15 the Honigman lawyers and Mr. Stewart from Butzel who
 11:06 16 represents the Detroit News to discuss this
 11:06 17 deposition?

11:06 18 (Whereupon Mr. Morganroth enters the room
 11:06 19 at 11:04 a.m.)

11:06 20 A. I have met with people in this room regarding matters
 11:06 21 relating to the representation of the mayor. Whether
 11:06 22 or not -- certainly, the fact of the deposition have
 11:06 23 come up, the question is whether or not there was any
 11:06 24 prep or discussion about what my answers would be, no.

11:06 25 BY MR. ZUCKERMAN:

11:06 1 Q. Okay. When you had -- and I'll just phrase it here
 11:06 2 discussions or interactions with SkyTel, I think
 11:06 3 you've indicated you did so in connection with
 11:06 4 representing the mayor and Ms. Beatty. Did you tell
 11:06 5 SkyTel that you were representing the City, as well?

11:07 6 A. No.

11:07 7 Q. Okay. And were you there on behalf of the City, as
 11:07 8 well?

11:07 9 A. I was not owe -- I was not, but it was -- it was
 11:07 10 difficult to have the discussion in in an inquiry
 11:07 11 without understanding that there were -- there were
 11:07 12 lots of other phones out there, and so I was really --
 11:07 13 again, I was kind of more gathering information to try
 11:07 14 to understand what had to be done than actually
 11:07 15 anything else. I wanted to first find out whether or
 11:07 16 not they had actually produced the stuff to Mr.
 11:07 17 Stefani, why they had done it in the face of two
 11:07 18 protective orders that said they shouldn't, how it got
 11:07 19 past them, what their procedures were, etcetera,
 11:07 20 etcetera, and then investigating methods of deleting
 11:07 21 this data that seemed not to be useful.

11:07 22 Q. Did you confer with City corporation counsel or
 11:07 23 someone in that office or any lawyer representing the
 11:08 24 City in advance of your trips or communications with
 11:08 25 SkyTel?

11:08 1 A. I don't recall. I -- I know that I had or -- I may
 11:08 2 have had a conversation with John Johnson about this
 11:08 3 in terms of talking to -- about maybe they may have to
 11:08 4 make some requests of SkyTel, but I don't know whether
 11:08 5 that was before or after or when it was.

11:08 6 Q. Okay.

11:08 7 MR. ZUCKERMAN: What number are we on?

11:08 8 MARKED BY THE REPORTER:

11:08 9 DEPOSITION EXHIBIT NUMBER 4

11:08 10 11:08 a.m.

11:08 11 BY MR. ZUCKERMAN:

11:08 12 Q. I'm going to show you another exhibit, just you take a
 11:08 13 look at it. This is FREEP 578 through 588 it's
 11:08 14 another directive this one's dated April 15th, 2008,
 11:08 15 directive for the use of City of Detroit's electronic
 11:08 16 communications system.

11:08 17 MR. THOMAS: What number are you going to
 11:08 18 label this?

11:08 19 MR. ZUCKERMAN: 4.

11:09 20 MR. LIEDEL: Actually, this is two in
 11:09 21 there, I believe.

11:09 22 MR. ZUCKERMAN: What do you mean by 2? I
 11:09 23 have two copies of the same thing?

11:09 24 MR. LIEDEL: No, you have the April 15th --

11:09 25 MR. ZUCKERMAN: Ah.

11:09 1 MR. LIEDEL: -- and then the June 26th.
 11:09 2 MR. ZUCKERMAN: I think that's because the
 11:09 3 June 26th, 2001 (sic), is an attachment to this, but
 11:09 4 if not, I'm merely -- since I've already asked him
 11:09 5 about that I'm only asking about the April 15th, 2008,
 11:09 6 which is 578 through and including 583.
 11:09 7 MR. GOODMAN: June 26th, 2000?
 11:09 8 MR. ZUCKERMAN: Yes, isn't that what I
 11:09 9 said?
 11:09 10 MR. GOODMAN: You said 2001.
 11:09 11 MR. ZUCKERMAN: Oh, I'm sorry.
 11:09 12 BY MR. ZUCKERMAN:
 11:09 13 Q. Have you had a chance to look at that?
 11:09 14 A. **I have it in front of me, I've never seen the document**
 11:09 15 **before.**
 11:09 16 Q. Okay, do you know why this was promulgated, prepared?
 11:09 17 A. **Do -- I have no idea. I've never seen this document**
 11:09 18 **before, I've never had a discussion about this**
 11:10 19 **document before.**
 11:10 20 Q. Okay, and you've never had any discussion about the
 11:10 21 reasons why this document was created?
 11:10 22 A. **I don't -- I certainly couldn't answer that, because**
 11:10 23 **I've never seen the document before, and I -- or the**
 11:10 24 **previous document, and I don't know what it contains**
 11:10 25 **or says.**

11:10 1 Q. That's fine.
 11:10 2 A. **So I don't know that I had any discussions about it or**
 11:10 3 **not, about what's in it or not.**
 11:10 4 Q. Okay. Did you have any agreement with Mr. Stefani
 11:11 5 that could be characterized as an obligation or duty
 11:11 6 of Mr. Stefani to notify you about any event relating
 11:11 7 to the --
 11:11 8 A. **I had no agreements -- I don't think that I've ever**
 11:11 9 **spoken to Mr. Stefani.**
 11:11 10 Q. Okay. Let me show you this. This is 5.
 11:11 11 MARKED BY THE REPORTER:
 11:11 12 DEPOSITION EXHIBIT NUMBER 5
 11:11 13 11:11 a.m.
 11:11 14 BY MR. ZUCKERMAN:
 11:11 15 Q. It's FREEP 700, purports to be an e-mail from Stefani
 11:11 16 to wmtchell@mitchelllord.com dated January 23, 2008,
 11:11 17 at 5:40 p.m.?
 11:11 18 A. Okay.
 11:11 19 Q. Can you just take a look at that.
 11:11 20 A. Okay.
 11:11 21 Q. Does that --
 11:11 22 A. **I don't think I've ever seen this.**
 11:12 23 Q. Okay. Is that your e-mail address?
 11:12 24 A. **That is my e-mail address.**
 11:12 25 Q. Okay, and so you're not aware of any obligation that

11:12 1 Mr. Stefani had to notify you of something or
 11:12 2 anything?
 11:12 3 A. **I've never had a conversation with Mr. Stefani.**
 11:12 4 Q. Okay.
 11:12 5 A. **And I don't -- and I -- I'm certain that I didn't**
 11:12 6 **respond to this because I've never -- I don't ever**
 11:12 7 **recall seeing it.**
 11:12 8 Q. Okay.
 11:12 9 A. **I'm not -- I guess lots of e-mails, and maybe I**
 11:12 10 **deleted that one or didn't see it, I don't know, but I**
 11:12 11 **don't recall it, I don't think I ever -- I'm certain**
 11:12 12 **that I didn't respond to it, and I've -- I don't think**
 11:12 13 **I've ever had a conversation with Mr. Stefani perhaps**
 11:12 14 **other than saying hello.**
 11:12 15 Q. Okay, and when I say Mr. Stefani, I --
 11:12 16 A. Or.
 11:12 17 Q. I mean in this context, anyone in his office?
 11:12 18 A. Yeah, no.
 11:12 19 Q. Same answer?
 11:12 20 A. Same answer.
 11:13 21 Q. Okay. I think this might be our last question, so
 11:13 22 bear with me if it's repetitive. You had -- you
 11:14 23 stated that you had represented the mayor, or, well,
 11:14 24 Ms. Beatty from October of '07 through January or '08.
 11:14 25 A. **Only with respect to -- again, only with respect to my**

11:14 1 **trying to get the information about the -- as it**
 11:14 2 **relates to Ms. Beatty.**
 11:14 3 Q. Yes.
 11:14 4 A. **Only about trying to understand the SkyTel process,**
 11:14 5 **what happened there.**
 11:14 6 Q. And your representation of the mayor is over a longer
 11:14 7 period of time?
 11:14 8 A. **My representation of the mayor, I believe, continues.**
 11:14 9 Q. Ah, okay.
 11:14 10 A. **Unless you know something that I don't.**
 11:14 11 MR. ZUCKERMAN: Okay, pass the witness.
 11:14 12 VIDEO TECHNICIAN: Can we go off to change
 11:14 13 the tapes?
 11:14 14 MR. ZUCKERMAN: Okay, we're going to change
 11:14 15 tapes.
 11:14 16 VIDEO TECHNICIAN: Going off the record.
 11:15 17 This marks the end of tape No. 1. The time is 11:13
 11:15 18 and 31 seconds a.m.
 11:15 19 (Recess taken at 11:13 a.m.)
 11:20 20 (Back on the record at 11:18 a.m.)
 11:20 21 VIDEO TECHNICIAN: We are back on the
 11:20 22 record. This starts the videotape No. 2. The time is
 11:20 23 11:18 and 34 seconds a.m.
 11:20 24 EXAMINATION
 11:20 25 BY MR. LIEDEL:

11:20 1 Q. Mr. Mitchell, my name's Bill Liedel, I'm representing
 11:20 2 the City, and I just want to cover a couple items I
 11:20 3 think you already responded to. Number one, you were
 11:20 4 not involved in the Brown, Nelthrop, or Harris
 11:20 5 lawsuits; is that correct?
 11:20 6 A. No, in fact, while -- I'm trying to remember whether I
 11:20 7 was in trial or otherwise engaged in something else
 11:20 8 when this was going on, and I do remember people
 11:20 9 watching television and seeing things, but -- so I was
 11:20 10 aware that it was going on but not really involved or
 11:20 11 interested in it actually.
 11:20 12 Q. Okay. In that regard then, you did not prepare nor
 11:20 13 were involved in the negotiation of any of the
 11:20 14 settlement documents; is that true?
 11:20 15 A. That's absolutely true.
 11:20 16 Q. Okay, and you have -- you do not have any custody of
 11:20 17 any settlement documents that were generated in that
 11:20 18 case; is that true?
 11:20 19 A. That's absolutely true.
 11:20 20 MR. LIEDEL: Thank you, sir, nothing
 11:21 21 further. Mr. Goodman, thank you.
 11:21 22 MR. GOODMAN: Oh, my pleasure.
 11:21 23 EXAMINATION
 11:21 24 BY MR. GOODMAN:
 11:21 25 Q. Good morning, Mr. Mitchell.

11:21 1 A. Good morning, sir, how are you?
 11:21 2 Q. I don't think we've ever met but --
 11:21 3 A. I've heard so much about you, Mr. Goodman, and
 11:21 4 actually some very good things, so it's nice to meet
 11:21 5 you.
 11:21 6 Q. That's a --
 11:21 7 A. Well, you know, in what we do, I have a friend that is
 11:21 8 a contractor, actually, I -- I invited him to join a
 11:21 9 club that I ran, and there were -- he was asked why --
 11:21 10 I was asked why I wanted him to come, I said well
 11:21 11 because I'm a lawyer and I figured if I brought some
 11:21 12 contractors in they'd have somebody else to talk
 11:21 13 about.
 11:21 14 Q. Anyway, it's a pleasure to meet you. Let me -- I have
 11:21 15 a few -- just a few questions, also. The first is
 11:21 16 that -- I think you indicated earlier in your
 11:22 17 testimony that your representation of both the mayor
 11:22 18 and Ms. Beatty started at the end of October; is that
 11:22 19 correct?
 11:22 20 A. Yeah, or sometime near the end of October in the
 11:22 21 twenties, I think.
 11:22 22 Q. In the twenties?
 11:22 23 A. Yeah.
 11:22 24 Q. And I'm particularly concerned about the date of
 11:22 25 October 23rd, 2007, which is the date that the Detroit

11:22 1 City Council approved a settlement in the Brown and
 11:22 2 Nelthrop case, do you know whether your
 11:22 3 representation of them --
 11:22 4 A. I really --
 11:22 5 Q. -- commenced before or after that --
 11:22 6 A. -- I really don't. I -- I believe it was after that
 11:22 7 date, and -- and this is why. My recollection is I
 11:22 8 got a call sometime around, perhaps, the 20th or so
 11:23 9 about talking to the mayor. I don't recall actually
 11:23 10 doing that for about a week to ten days later. So
 11:23 11 that's why I say the twenties, somewhere around the
 11:23 12 end of the month.
 11:23 13 Q. In the course of your representation, were you aware
 11:23 14 of the fact that the City Council had either approved
 11:23 15 the settlement or was considering the approval of the
 11:23 16 settlement, either one of those?
 11:23 17 A. At some point, I became aware that they had
 11:23 18 approved -- had approved the settlement because I
 11:23 19 was -- the day that the documents were exchanged was
 11:23 20 the same day that the settlement was placed on the
 11:23 21 record.
 11:23 22 Q. Yeah, and --
 11:23 23 A. So I, naturally, assumed that the City Council had
 11:23 24 approved the settlement.
 11:23 25 Q. Right. But I mean in terms of the actual event,

11:23 1 itself --
 11:23 2 A. I had no -- no -- no specific knowledge or
 11:23 3 involvement.
 11:23 4 Q. And you were not present at council chambers when
 11:24 5 that --
 11:24 6 A. No.
 11:24 7 Q. -- occurred; is that right, sir?
 11:24 8 A. No, that's correct, I was not.
 11:24 9 Q. You indicated that you had had a conversation with Mr.
 11:24 10 John Johnson at some point; is that correct, sir?
 11:24 11 A. I -- you know, I really am trying to be as forthright
 11:24 12 as I can, I don't know whether -- whether I actually
 11:24 13 had the conversation with him about this or whether I
 11:24 14 -- you know, it was one of those things where I think
 11:24 15 I need to talk to John about this or -- but I -- I --
 11:24 16 to the extent that some action with regard -- some
 11:24 17 request with regard to action about these records had
 11:24 18 to be made, it certainly was a part of my thought
 11:24 19 process that John might have to be involved now I
 11:24 20 don't know whether I actually talked to him or not. I
 11:24 21 know Mr. Johnson personally and I know his wife and I
 11:25 22 just don't remember whether I actually discussed it
 11:25 23 with him or not, maybe I did, maybe I didn't, but to
 11:25 24 any extent to my knowledge, nothing -- no action was
 11:25 25 taken by the City with regard to -- I don't -- I don't

11:25 1 know whether the City had any specific conversation
 11:25 2 with -- or Mr. Johnson had on the City's behalf of had
 11:25 3 any specific conversations with SkyTel or not.
 5 4 Q. All right. And I understand your answer to be you may
 11:25 5 or may not have had one conversation with Mr. Johnson.
 11:25 6 A. I -- yeah.
 11:25 7 Q. Were there more than one, is it possible that you had
 11:25 8 more than one conversation with him?
 11:25 9 A. Well, I -- I've had several conversations with Mr.
 11:25 10 Johnson about various things, but I -- this in
 11:25 11 particular, I'm not sure whether I ever got to the
 11:25 12 point where I actually -- I don't know whether I
 11:25 13 talked to him or not. But -- and -- and this is why I
 11:26 14 say that: You know, I was kind of frustrated in my
 11:26 15 dealings with SkyTel and I didn't -- I didn't know
 11:26 16 whether the City had to make some requests or whether
 11:26 17 the City should be involved, I was really trying to
 11:26 18 find those things out, and it's one of those things
 11:26 19 where I think I put a pin in it and said I need to
 11:26 20 probably talk to John about it, whether I actually did
 11:26 21 or not, I don't know.
 11:26 22 Q. Did you ever in addition to the possibility of
 11:26 23 conversations, did you ever do any written
 11:26 24 communication with Mr. Johnson about these matters,
 11:26 25 memos, correspondence, anything like that?

11:26 1 A. I don't believe so.
 11:26 2 Q. Or anyone else in the City Law Department?
 11:26 3 A. I don't -- I don't believe so.
 11:26 4 Q. Now, either Mr. Liedel or Mr. Zuckerman asked you
 11:26 5 about --
 11:26 6 A. Let me go back.
 11:26 7 Q. I'm sorry, go ahead.
 11:26 8 A. I do recall having a conversation with Mr. Johnson
 11:26 9 and/or one of the other people at his office about the
 11:27 10 subpoena by the Free Press of the SkyTel records, the
 11:27 11 initial subpoena.
 11:27 12 Q. And can you tell us what the nature of that
 11:27 13 conversation was?
 11:27 14 A. I was informed by Ms. Mullins that the Free Press had
 11:27 15 filed -- it was actually very interesting because I'm
 11:27 16 not sure that the City even knew that the lawsuit had
 11:27 17 been filed. But certainly it appeared they did not
 11:27 18 know that a subpoena had been issued, and I received a
 11:27 19 call or an e-mail or something from Ms. Mullins
 11:27 20 indicating that there had been and I think I
 11:27 21 communicated that to Mr. Johnson.
 11:27 22 Q. Were you aware of the fact that there was a pending
 11:27 23 Freedom of Information Act Request from the Free Press
 11:27 24 to the law department regarding settlement documents
 11:28 25 in this case or in the Brown Nelthrop Harris case

11:28 1 between October 19th and the end of October of 2007?
 11:28 2 A. I don't -- I may have been aware but I'm not sure
 11:28 3 that -- I may have been aware. I mean I'm -- I am
 11:28 4 aware now.
 11:28 5 Q. Yes.
 11:28 6 A. I just don't know when I became aware.
 11:28 7 Q. Did anybody from the City Law Department ever contact
 11:28 8 you or communicate with you in connection with that
 11:28 9 FOIA request?
 11:28 10 A. Communicate with me in what regard? I mean as.
 11:28 11 Q. With --
 11:28 12 A. As counsel or just --
 11:28 13 Q. In attempting to determine whether there were
 11:28 14 settlement documents, whether you had those documents,
 11:28 15 whether you knew anything about those documents?
 11:28 16 A. No, because I wasn't involved in the settlement at
 11:28 17 all.
 11:28 18 Q. I -- I understand --
 11:28 19 A. Now.
 11:28 20 Q. -- and you've --
 11:28 21 A. No.
 11:28 22 Q. And you've already testified to that but my question
 11:28 23 really is whether they ever inquired of you, did you
 11:29 24 know anything about it?
 11:29 25 A. I can't imagine why they would.

11:29 1 Q. All right.
 11:29 2 A. Because these were lawyers who were, in fact, involved
 11:29 3 in that litigation, so they know that I wasn't, so why
 11:29 4 would they -- I don't think that they inquired of me
 11:29 5 about it.
 11:29 6 Q. All right. And you've indicated as you just said that
 11:29 7 you were not involved in the settlement or in the
 11:29 8 drafting of any of the agreements; is that right?
 11:29 9 A. I was not sir.
 11:29 10 Q. Were you ever shown any of the agreements?
 11:29 11 MR. THOMAS: Objection, relevance time
 11:29 12 frame.
 11:29 13 A. I -- I don't remember, and I'll give you this context.
 11:30 14 Mr. McCargo and Mr. Copeland were able -- I had
 11:30 15 several discussions with them. More so in trying to
 11:30 16 get information about the protective orders and this
 11:30 17 whole subpoena thing during the course of the trial
 11:30 18 and all of that. There were -- I talked to them
 11:30 19 several times during this time period. I assumed that
 11:30 20 that was the same time period that some of the
 11:30 21 settlement stuff was going on. Whether I knew that
 11:30 22 there was -- that they were having settlement
 11:30 23 discussions, I don't know what they were, I don't know
 11:30 24 when they were going to City Council with the requests
 11:30 25 or any of that, but I -- I -- I don't want to sound

11:30 1 **disingenuous in that I wasn't aware that something was**
 11:30 2 **going on, it just -- I wasn't a part of it.**

11:31 3 BY MR. GOODMAN:

11:31 4 Q. Okay.

11:31 5 A. Is that --

11:31 6 Q. The question really was whether you were shown any of
 11:31 7 these documents.

11:31 8 A. I don't -- and I just don't remember that.

11:31 9 Q. And just as to a follow up of that, and really we are
 11:31 10 getting near the end of this line of questioning, all

11:31 11 my questions, but were you ever told that there was

11:31 12 confidentiality agreement that the parties had agreed

11:31 13 upon and that there was to be no disclosure to any

11:31 14 third persons regarding the text messages, the context

11:31 15 of the text messages, and when I say the text

11:31 16 messages, I mean those between the mayor and

11:31 17 Ms. Beatty.

11:31 18 A. I don't -- I don't --

11:31 19 MR. MORGANROTH: Objection to form and
 11:31 20 foundation.

11:31 21 A. I don't recall -- well, I didn't see such a document.

11:31 22 I know that there was some agreement because as a

11:31 23 result of that agreement, I was placed in a position

11:31 24 of receiving some documents.

11:32 25 BY MR. ZUCKERMAN:

11:32 1 Q. Yeah.

11:32 2 A. But you know, what the context or the -- the specifics
 11:32 3 of the agreement were, I don't know. I didn't know.

11:32 4 I may have seen subsequently --

11:32 5 Q. Then you were never told that there was to be no

11:32 6 disclosure of this confidentiality agreement to the

11:32 7 Detroit City Council; is that correct?

11:32 8 A. I was under the impression, I'm not sure that -- I

11:32 9 wasn't told -- whether I was told or whether I in my

11:32 10 own process determined that these documents were being

11:32 11 exchanged, my -- I assume, I believe that they were

11:32 12 being exchanged for the purpose of keeping them

11:32 13 private.

11:32 14 MR. THOMAS: Objection as to assumption.

11:32 15 A. Yeah, but I don't know that anybody actually told me
 11:32 16 that but why else would you do that.

11:32 17 BY MR. GOODMAN:

11:32 18 Q. My question went specifically to the Detroit --

11:32 19 A. Whether somebody told me and I don't know the answer

11:32 20 to that. I -- they may have, but I -- it seems to me

11:32 21 that I just came to the conclusion that this was an

11:33 22 effort to keep this information private.

11:33 23 VIDEO TECHNICIAN: Your microphone --

11:33 24 BY MR. GOODMAN:

11:33 25 Q. And as such --

11:33 1 MR. THOMAS: Your microphone -- you are on
 11:33 2 an electronic tether.

11:33 3 MR. GOODMAN: It's going to happen sooner
 11:33 4 or later, might as well be now.

11:33 5 BY MR. GOODMAN:

11:33 6 Q. Whether that assumption was based on something
 11:33 7 somebody told you or not, you can't say at this time?

11:33 8 A. I can't really say, I mean Mr. Goodman I was aware
 11:33 9 that they had been trying to -- they had been trying
 11:33 10 to settle the case, I was not involved in that. I was
 11:33 11 really more interested in whether Mr. Stefani had
 11:33 12 gotten the records, how he had gotten them, what
 11:33 13 SkyTel was doing, whether or not they were aware of
 11:34 14 these protective orders and how they got -- and
 11:34 15 whether or not this was going to be happening again.

11:34 16 What was going on with regard to the Brown
 11:34 17 and Nelthrop case was going on without me, I wasn't a
 11:34 18 part of that, though I had conversations with some of
 11:34 19 the lawyers who were, so it's hard to separate what
 11:34 20 for my own legal mind I deduced or whether or not
 11:34 21 somebody said something that made me think or -- or
 11:34 22 not.

11:34 23 Q. And by some of the lawyers, you mean Mr. McCargo --

11:34 24 A. Mr. McCargo, Mr. --

11:34 25 Q. -- Mr. Copeland?

11:34 1 A. -- Copeland.

11:34 2 Q. And Ms. Osumwade?

11:34 3 A. Yes.

11:34 4 Q. Mr. Johnson?

11:34 5 A. Not so much.

11:34 6 Q. Okay, and Mr. Stefani, you've already described your
 11:34 7 interactions with him?

11:34 8 A. I don't -- I really don't know Mr. Stefani. I have
 11:34 9 met him maybe once or twice.

11:34 10 Q. Okay. I'm going to have an exhibit marked and ask you
 11:35 11 to take a quick look at it here.

11:35 12 COURT REPORTER: This will be No. 6.

11:35 13 MARKED BY THE REPORTER:

11:35 14 DEPOSITION EXHIBIT NUMBER 6

11:35 15 11:35 a.m.

11:35 16 MR. LIEDEL: What number?

11:35 17 COURT REPORTER: No. 6.

11:36 18 A. Yes, sir.

11:36 19 BY MR. GOODMAN:

11:36 20 Q. You've had a chance to look at this?

11:36 21 A. I have.

11:36 22 Q. Do you remember it or?

11:36 23 A. Do I remember the e-mail? No.

11:36 24 Q. Do you remember receiving --

11:36 25 A. I remember the time, I remember the substance, but I

11:36 1 -- specifically receiving this e-mail, no or a copy of
 11:36 2 it, I guess I was copied.
 11:36 3 Q. Yes, it appears that you were copied. My -- and
 3 4 apparently Mr. Moffitt received copies of these papers
 11:36 5 for -- in connection with the summary disposition
 11:36 6 motions in the Brown Nelthrop and Harris cases?
 11:36 7 A. You could I guess assume that from the text of the
 11:36 8 document.
 11:36 9 Q. Did you ever receive those papers?
 11:36 10 A. I am certain that I did at some point.
 11:36 11 Q. Did you review them?
 11:36 12 A. The -- the summary disposition motions?
 11:37 13 Q. Yeah.
 11:37 14 A. I -- no, I did not.
 11:37 15 Q. And what was your purpose in securing these motions in
 11:37 16 February, 2008?
 11:37 17 A. Oh, that's -- I think that's attorney privileged
 11:37 18 information.
 11:37 19 Q. Okay. All right.
 11:37 20 A. I mean clearly, we were working -- this was working on
 11:37 21 the case.
 11:37 22 Q. I -- yes. Finally, and this is really the last, I'm
 11:37 23 interested -- you indicated that you had represented
 11:37 24 the City or been involved with the City of Detroit as
 11:37 25 co council with Miller Canfield --

11:37 1 A. Miller Canfield.
 11:37 2 Q. -- in the GDRRA matter?
 11:37 3 A. In the GDRRA -- I may have had -- I know I consulted
 11:37 4 but this is some years ago, and I don't recall I may
 11:37 5 have had one case where I consulted with the law
 11:37 6 department on something, but it was not anywhere near
 11:37 7 any of this, it was maybe some years ago.
 11:38 8 Q. Were you bond counsel or -- underwriter counsel?
 11:38 9 A. No, I think it was -- there was some litigation or
 11:38 10 something, that I was asked to take a look at, and
 11:38 11 I -- and I did, and I just don't recall --
 11:38 12 Q. And currently, you have no -- you are not representing
 11:38 13 anybody in connection with any City of Detroit bonds
 11:38 14 at the present time?
 11:38 15 A. I'm sorry?
 11:38 16 Q. Do you represent -- are you underwriter counsel or
 11:38 17 bond counsel in nay matters for the City of --
 11:38 18 A. I'm not bond counsel, I have been co bond counsel in
 11:38 19 some cases.
 11:38 20 Q. But not currently?
 11:38 21 A. No, not currently.
 11:38 22 MR. GOODMAN: All right, that's all I have,
 11:38 23 thank you very much.
 11:38 24 MR. STEWART: I have no questions on behalf
 11:38 25 of the Detroit News, thank you.

EXAMINATION

11:38 1
 11:38 2 BY MR. THOMAS:
 11:38 3 Q. Briefly, Mr. Mitchell, what is your practice at this
 11:38 4 point in time?
 11:39 5 A. I'm not sure what you mean what is my practice. I've
 11:39 6 been practicing nearly 30 years or about that, my
 11:39 7 practice has involved product liability, it has
 11:39 8 involved transactional work, it has involved military
 11:39 9 law, it has involved civil cases of various sorts. I
 11:39 10 have been involved in contract litigation. My
 11:39 11 background is fairly varied. And my practice, tends
 11:39 12 to be so, as well.
 11:39 13 Q. Would you -- would you characterize your practice as a
 11:39 14 criminal defense practice or would it be a general
 11:39 15 practice?
 11:39 16 A. I would characterize it more as a general practice. I
 11:39 17 mean some of my -- I -- I have been involved in
 11:39 18 municipal -- representing municipalities. I've
 11:39 19 represented the City of Flint I've represented the
 11:40 20 City of Warren, the mayors of both. So I don't know
 11:40 21 what you'd call my practice.
 11:40 22 Q. Well, I'd like to know whether or not you -- you would
 11:40 23 call it a criminal defense practice?
 11:40 24 A. I would not.
 11:40 25 Q. All right.

11:40 1 A. I would not limit it to that, as well I am involved in
 11:40 2 personal injury as well so.
 11:40 3 Q. When you were contacted by the parties who you ended
 11:40 4 up representing in this case, was there a pending
 11:40 5 criminal action?
 11:40 6 A. There was not.
 11:40 7 Q. When was it that you first found out that there was a
 11:40 8 possibility that --
 11:40 9 A. Sometime in 2008, but -- sometime in 2008.
 11:40 10 Q. Would it be a fair characterization that your
 11:40 11 correspondence with SkyTel and your contacts with Ms.
 11:40 12 Mullins were -- were not related to any potential
 11:40 13 criminal case?
 11:40 14 A. Absolutely, that's a fair statement. At the -- at the
 11:41 15 time this was going on, my biggest concern was how
 11:41 16 did -- I didn't -- I don't think anyone actually
 11:41 17 believed that Mr. Stefani had these records because it
 11:41 18 seemed -- it seemed improbable that a company as large
 11:41 19 as SkyTel had made such a huge error, and so really my
 11:41 20 concern was whether he'd gotten these documents and
 11:41 21 whether they were going to be in the paper somewhere.
 11:41 22 I didn't -- I wasn't involved in
 11:41 23 the -- in the civil case, didn't know anything about
 11:41 24 whether or not there was any -- any issue from a
 11:41 25 criminal standpoint, and I -- I guess I at the time I

11:41 1 would have assumed that if there had been, Mr. Stefani
 11:42 2 would have -- would have brought some motion or done
 11:42 3 something since he had, I guess, the opportunity to
 2 4 review it, but my concern really was what was -- what
 11:42 5 was going on with these records and how if he'd gotten
 11:42 6 them, how he'd gotten them and what was SkyTel doing.
 11:42 7 Q. Prior to coming to this deposition, had you had any
 11:42 8 conversations with the prosecutor's office?
 11:42 9 A. Prior to coming here today?
 11:42 10 Q. Yes.
 11:42 11 A. Yes, I have.
 11:42 12 Q. Did you have an attorney with you at the time that you
 11:42 13 went to the prosecutor's office?
 11:42 14 A. I did not.
 11:42 15 Q. Did they ask you questions relating to this matter?
 11:42 16 A. They did.
 11:42 17 Q. And did you have in those conversations a complete
 11:42 18 disclosure with them as you have done here?
 11:42 19 A. Absolutely.
 11:42 20 Q. The -- there was reference in your direct testimony
 11:42 21 with Mr. Zuckerman to the effect that you had received
 11:42 22 documents at Comerica Bank.
 11:42 23 A. Yes.
 11:42 24 Q. Prior to that time, were you in court?
 11:42 25 A. I was in court.

11:43 1 Q. Where was that?
 11:43 2 A. It was in Wayne County -- it was I'm sorry, it was in
 11:43 3 Recorder's Court or Frank Murphy Hall of Justice,
 11:43 4 Judge Callahan's courtroom.
 11:43 5 Q. What we call the Wayne County Circuit Court Criminal
 11:43 6 Division?
 11:43 7 A. That's correct.
 11:43 8 Q. The old Recorder's Court?
 11:43 9 A. That's correct.
 11:43 10 Q. At that time, did you observe any contact with the --
 11:43 11 the judge and the parties in this matter that were on
 11:43 12 the record?
 11:43 13 A. Yes.
 11:43 14 Q. And was that the settlement of this case?
 11:43 15 A. Yes.
 11:43 16 Q. And subsequent to that, was there or did there appear
 11:43 17 to be an off-the-record conversation between the judge
 11:43 18 and any other parties?
 11:43 19 A. Yes, what -- what occurred afterwards was some
 11:43 20 reason -- gave some reason for pause and one -- one of
 11:43 21 the things that subsequently led me to being even more
 11:43 22 concerned about the press getting a hold of this: The
 11:44 23 judge at the conclusion of put -- first of all, no one
 11:44 24 seemed to understand why the Court was insisting upon
 11:44 25 the parties -- all the parties coming in and putting

11:44 1 this on the record is -- I heard the rumblings and
 11:44 2 mumblings, there was -- everything had been signed off
 11:44 3 and all the parties agreed and the lawyers seemed to
 11:44 4 be at a loss for why it was necessary to do it in the
 11:44 5 manner that the judge was insisting that it be done,
 11:44 6 but -- and it was -- it was brief. It took five
 11:44 7 minutes to -- to -- he asked whether or not a
 11:44 8 settlement had occurred. He asked what was the
 11:44 9 amount, all of these things, I think, had been placed
 11:44 10 in the paper already, in fact. Can --
 11:44 11 Q. Can you fix a date on that?
 11:44 12 A. I believe it was December 6th, it's either December
 11:44 13 6th and 11th and I'm not sure which but I tend to
 11:45 14 think it was December 6th, but after the settlement
 11:45 15 was placed on the record, the judge asked the parties
 11:45 16 the -- the plaintiffs, to come -- to go back with him
 11:45 17 in chambers, and he was having some discussion with
 11:45 18 them back there. He didn't invite any of the lawyers
 11:45 19 defense lawyers he didn't ask whether the defense
 11:45 20 lawyers wanted to participate or had any objection to
 11:45 21 them talking to him. Mr. Stefani and the two
 11:45 22 plaintiffs went back to the judge's chambers, while
 11:45 23 they were there, someone else of the judge's staff
 11:45 24 came out and told one of the Free Press reporters, I
 11:45 25 believe it wasn't Schaefer, it was --

11:45 1 Q. You dropped your voice it wasn't Mr. Schaefer?
 11:45 2 A. It wasn't Mr. Schaefer, it was -- I'm terrible with
 11:45 3 names now, the other -- his partner.
 11:45 4 Q. Would that be M.L. Elrick?
 11:46 5 A. Elrick, not to leave because the judge was going to
 11:46 6 talk to him next.
 11:46 7 Q. And this is still while Stefani's in the back?
 11:46 8 A. This is still while Stefani and the two plaintiffs,
 11:46 9 Mr. Nelthrop and Mr. Brown, were in the back.
 11:46 10 Q. When you say Stefani, there's Michael Stefani and his
 11:46 11 -- and his son. Are you talking about --
 11:46 12 A. Mr. -- Mr. Stefani, Sr.
 11:46 13 Q. Now was there anyone else besides Mr. Stefani from the
 11:46 14 plaintiff's team that went back there?
 11:46 15 A. Only the two plaintiffs, themselves.
 11:46 16 Q. All right. And can you describe the woman that came
 11:46 17 out and gave you that message?
 11:46 18 A. I don't know, it was one of the -- it was -- I'd like
 11:46 19 to say it was the judge's clerk, but I'm not sure
 11:46 20 whether it was the clerk or the secretary, it was a
 11:46 21 part -- clearly a part of the judge's staff.
 11:46 22 Q. Was there a white female with silver hair?
 11:46 23 MR. ZUCKERMAN: Can I interrupt for a
 11:46 24 second? Can you explain how this leads to the
 11:46 25 discovery of documents?

11:46 1 MR. THOMAS: It leads to the discovery of
 11:46 2 documents the same way as your questions about the
 11:47 3 settlement relates to it.
 7 4 MR. ZUCKERMAN: Well, we were told not to
 11:47 5 go into that anymore. I'd like to know how this line
 11:47 6 of questions does anything other than to try to
 11:47 7 develop a cause of action separate from this case.
 11:47 8 MR. THOMAS: Do you have an objection?
 11:47 9 MR. ZUCKERMAN: Yes.
 11:47 10 MR. THOMAS: Objection noted.
 11:47 11 MR. ZUCKERMAN: Okay.
 11:47 12 BY MR. THOMAS:
 11:47 13 Q. Go ahead.
 11:47 14 A. You know, I just -- my recollection is that I was -- I
 11:47 15 was kind of shocked by the whole thing, and I was
 11:47 16 wondering, you know, in my experience, a judge
 11:47 17 would -- would say, you know, defense counsel, I'd
 11:47 18 like to have some conversation with -- with the
 11:47 19 plaintiffs or whatever, I'm goaling going to talk to
 11:47 20 them about X, would you -- you're invited to come or
 11:47 21 do you have any objection to my doing so? If so, I
 11:47 22 won't or your -- I mean he just told them to come back
 11:47 23 to his chambers, and then the next thing I know I'm
 11:47 24 still standing there and you know I'm kind of milling
 11:47 25 around, I'm kind of looking kind of thinking well

11:48 1 what's this all about, and a couple minutes later,
 11:48 2 this lady comes out and tells Mr. Elrick not to leave
 11:48 3 because the judge is going to talk to him next.
 11:48 4 Q. What did you see then next?
 11:48 5 A. Mr. Elrick stayed -- stayed still, and he
 11:48 6 acknowledged, as I recall, her saying it, and he
 11:48 7 remained there.
 11:48 8 Q. And then after that, did you remain in the courtroom?
 11:48 9 A. No, I left.
 11:48 10 Q. Did you see Mr. Elrick or Mr. Schaefer go into the
 11:48 11 judge's chambers?
 11:48 12 A. I did not.
 11:48 13 MR. THOMAS: I have nothing further.
 11:48 14 Anyone else?
 11:48 15 MR. ZUCKERMAN: Yeah, let me ask a
 11:48 16 question.
 11:48 17 EXAMINATION
 11:48 18 BY MR. ZUCKERMAN:
 11:48 19 Q. You went through a discussion of what you observed
 11:48 20 that day in court.
 11:48 21 A. Yes.
 11:48 22 Q. Why were you there?
 11:48 23 A. To observe.
 11:48 24 Q. Why?
 11:48 25 A. Because I'd been -- I'd been told that after the

11:49 1 settlement occurred, they were going to meet at the
 11:49 2 bank, AND so I didn't know how long it was going to
 11:49 3 be, and so I decided to go to the Court and then walk
 11:49 4 over to the bank, they're really across the street
 11:49 5 from each other, sort of.
 11:49 6 MR. ZUCKERMAN: Okay. No further
 11:49 7 questions.
 11:49 8 MR. STEWART: I have one or two.
 11:49 9 MR. THOMAS: I'm going to pass this under
 11:49 10 the table.

EXAMINATION

11:49 11
 11:49 12 BY MR. STEWART:
 11:49 13 Q. Mr. Mitchell, I'm Jim Stewart from the Detroit News.
 11:49 14 A. Yes, sir.
 11:49 15 Q. You indicated, I think earlier, you had not seen the
 11:49 16 so-called Stefani motion as we've come to refer to it?
 11:49 17 A. I never did, yes.
 11:49 18 Q. Okay. When did you -- have you ever learned what was
 11:49 19 in it?
 11:49 20 A. I -- I've never seen it. And the only discussions
 11:50 21 were very general in nature, so -- I -- I -- I
 11:50 22 understood that there was -- there were things in it
 11:50 23 that were, perhaps, embarrassing and people who were
 11:50 24 discussing it were sort of embarrassed to discuss it,
 11:50 25 so you know, it's -- I -- I never -- I never saw it

11:50 1 and no one ever discussed with me the absolute
 11:50 2 specifics of it.
 11:50 3 Q. Did anybody ever discuss with you the fact that
 11:50 4 Mr. Stefani at least was alleging in that motion that
 11:50 5 the text messages he had demonstrated that the mayor
 11:50 6 had lied under oath.
 11:50 7 MR. MORGANROTH: Objection to foundation
 11:50 8 and form also --
 11:50 9 A. You know, I don't recall that, but you know, it seemed
 11:51 10 to me that if Mr. Stefani and perhaps you know better
 11:51 11 than me Mr. Stewart, if Mr. Stefani had had -- had
 11:51 12 actually had the text messages and he had conducted
 11:51 13 the trial and conducted the examination and he
 11:51 14 believed that there was perjury, it seemed to me that
 11:51 15 it was his obligation to notify the Court and or the
 11:51 16 prosecutor and/or the bar, etcetera. He did none of
 11:51 17 that to my knowledge. To my knowledge, what he did
 11:51 18 was put it in the so-called motion to extract a
 11:51 19 settlement.
 11:51 20 BY MR. STEWART:
 11:51 21 Q. Okay, when --
 11:51 22 A. But I don't -- but I don't know whether that was in
 11:51 23 there or not. I don't.
 11:51 24 Q. But when did you learn that he -- as you put it, put
 11:51 25 it in that motion?

11:51 1 MR. MORGANROTH: Objection, form and
 11:51 2 foundation.
 11:51 3 **A. I just said I don't know whether he put it in that**
 1 4 **motion or -- whether he put that language in the**
 11:51 5 **motion, I understand that there were alleged to be**
 11:52 6 **excerpts of text messages in that motion, but I don't**
 11:52 7 **know, I never saw the motion, nobody ever gave me any**
 11:52 8 **point by point. All I understood from the motion was**
 11:52 9 **that there was some -- there was something -- there**
 11:52 10 **were some things in there that were embarrassing in**
 11:52 11 **nature, some statements alleged to be text messages.**

11:52 12 BY MR. STEWART:

11:52 13 **Q.** Embarrassing to who?

11:52 14 MR. MORGANROTH: Objection to foundation
 11:52 15 and to form.

11:52 16 **A. To -- to -- I believe to be to the mayor and/or Ms.**
 11:52 17 **Beatty.**

11:52 18 MR. STEWART: Thank you very much, sir.

11:52 19 MR. GOODMAN: I have some questions.

11:52 20 RE-EXAMINATION

11:52 21 BY MR. GOODMAN:

11:52 22 **Q.** Mr. Mitchell, I think you testified in response to
 11:52 23 Mr. Thomas' questions and, more or less, in just now
 11:52 24 in response to Mr. Stewart's questions that you had
 11:52 25 assumed throughout or at least for some period of time

11:53 1 that Mr. Stefani really never had the text messages;
 11:53 2 is that right?
 11:53 3 **A. I think you know -- there was kind of a belief that he**
 11:53 4 **didn't have them which is why -- I mean I was -- there**
 11:53 5 **were two Court orders saying that this stuff had to go**
 11:53 6 **directly to the Court, okay? Mr. Stefani is an**
 11:53 7 **officer of the Court. I could not really believe that**
 11:53 8 **he had violated directly those orders, had requested**
 11:53 9 **these things from SkyTel and SkyTel having at least**
 11:53 10 **been served with both orders had actually given them**
 11:53 11 **to him, so no, I guess I didn't believe that he had**
 11:53 12 **them.**

11:53 13 BY MR. GOODMAN:

11:53 14 **Q.** So that belief -- your belief that he didn't have them
 11:53 15 was based upon what you presumed he would and should
 11:53 16 have done as a -- as a licensed attorney; is that
 11:53 17 right?

11:53 18 **A. Absolutely.**

11:53 19 **Q.** Was that and you say there was a belief, was that
 11:54 20 belief a belief of others --

11:54 21 **A. That was my belief I don't want to really speak for**
 11:54 22 **others but that was certainly my belief.**

11:54 23 **Q.** So you can't testify as to whether this was the belief
 11:54 24 of others; is that right?

11:54 25 **A. You know, I -- I just --**

11:54 1 MR. MORGANROTH: Objection to form and
 11:54 2 foundation.

11:54 3 MR. THOMAS: The reason why I'm going to
 11:54 4 object to the form of the question is he said it was
 11:54 5 an assumption and now it's a belief.

11:54 6 MR. GOODMAN: No, he's testified that it
 11:54 7 was --

11:54 8 MR. THOMAS: Well --

11:54 9 MR. GOODMAN: -- a belief.

11:54 10 MR. THOMAS: Based on an assumption.

11:54 11 MR. GOODMAN: Well, I don't -- I -- it
 11:54 12 makes no difference what it was based on.

11:54 13 **A. Mr. Goodman, I will say this. I'm just not really**
 11:54 14 **comfortable saying what other people believed. I**
 11:54 15 **certainly will say that I -- I expressed my concerns**
 11:54 16 **or belief.**

11:54 17 BY MR. GOODMAN:

11:54 18 **Q.** Let me ask you directly, and understanding that you're
 11:54 19 uncomfortable about this, but it does have some
 11:54 20 bearing upon the issues here. Did Mr. McCargo ever
 11:54 21 express that belief to you? That -- that fact --

11:55 22 **A. Yes.**

11:55 23 **Q.** -- Stefani didn't have it ^ ?

11:55 24 **A. In this -- when I was first brought into this and --**
 11:55 25 **and we're discussing these things, I -- based upon**

11:55 1 **those discussions, I operated and believed that Mr.**
 11:55 2 **Stefani did not have these things without saying**
 11:55 3 **specifically what anybody else said, is that helpful?**
 11:55 4 **I'm not --**

11:55 5 MR. THOMAS: It may be, but I'm going to
 11:55 6 object to any conversations between the lawyers.

11:55 7 MR. GOODMAN: Based on what?

11:55 8 MR. THOMAS: Based on attorney-client
 11:55 9 privilege, they're both representing the mayor.

11:55 10 MR. MORGANROTH: Work product.

11:55 11 BY MR. GOODMAN:

11:55 12 **Q.** All right. Did Mr. Copeland ever express that belief
 11:55 13 to you?

11:55 14 MR. THOMAS: Was Copeland representing the
 11:55 15 mayor?

11:55 16 MR. MORGANROTH ^ : City of Detroit.

11:55 17 MR. THOMAS: Is that something that's
 11:55 18 already been established? And if not, then I say --

11:55 19 MR. GOODMAN: There's no question. He
 11:55 20 represented only the City of Detroit.

11:56 21 MR. THOMAS: There was a joint -- there was
 11:56 22 a joint defense in this case, and so I say to that,
 11:56 23 even though he is representing the City of Detroit,
 11:56 24 there is a legitimate question as to whether or not
 11:56 25 any conversations between the lawyers are admissible.

11:56 1 MR. ZUCKERMAN: Is that in writing?
 11:56 2 MR. THOMAS: Doesn't have to be.
 11:56 3 MR. ZUCKERMAN: I didn't ask that. I said
 6 4 is it in writing? Well, if there's a joint defense
 11:56 5 agreement in writing, it ought to be produced because
 11:56 6 it's been referenced before. If it's oral, it ought
 11:56 7 to be stated as oral.
 11:56 8 MR. THOMAS: I don't think Mr. McCargo said
 11:56 9 it was in writing.
 11:56 10 MR. ZUCKERMAN: That's what I'm asking you.
 11:56 11 MR. THOMAS: I'm saying what he said,
 11:56 12 because what he said in his deposition --
 11:56 13 MR. ZUCKERMAN: Oh, you don't have a copy
 11:56 14 of one of those, do you?
 11:56 15 MR. THOMAS: Am I on the stand?
 11:56 16 MR. ZUCKERMAN: Well, then there's no found
 11:56 17 -- there's no basis in this --
 11:56 18 MR. THOMAS: There is because a oral --
 11:56 19 ^ Gentlemen --
 11:56 20 MR. THOMAS: -- agreement is -- is
 11:56 21 entirely binding.
 11:56 22 MR. ZUCKERMAN: Well, what are the terms
 11:56 23 of it if you're going to rely on it?
 11:56 24 MR. THOMAS: I rely on McCargo's
 11:56 25 deposition, I just want to make a record.

11:56 1 MR. MORGANROTH: Also on the record, his
 11:56 2 assumptions are also work product under the law.
 11:56 3 BY MR. GOODMAN:
 11:56 4 Q. I'm asking him a question, and the question is did Mr.
 11:56 5 Copeland ever express to you the belief that, in fact,
 11:57 6 Stefani did not have these documents?
 11:57 7 A. **I -- I can't single out Mr. Copeland. I will say that**
 11:57 8 **I had discussions about it. Mr. Copeland may have**
 11:57 9 **been present. But I -- I can't single out and recall**
 11:57 10 **what Mr. Copeland said specifically.**
 11:57 11 Q. How about Mr. Johnson?
 11:57 12 A. **Mr. Johnson was not a part of any discussion.**
 11:57 13 Q. How about Ms. Colbert Osamuede?
 11:57 14 MR. THOMAS: Same objection.
 11:57 15 A. **I don't recall whether she was present or not.**
 11:57 16 MR. GOODMAN: That's all I have, thank you.
 11:57 17 MR. ZUCKERMAN: Anyone else have any
 11:57 18 questions?
 11:57 19 MR. THOMAS: I have a question.
 11:57 20 MR. ZUCKERMAN: Well, wait. On the record
 11:57 21 or off?
 11:57 22 MR. THOMAS: Off the record.
 11:57 23 MR. ZUCKERMAN: Yeah, I bet. Thank you
 11:57 24 very much, Mr. Mitchell.
 11:57 25 THE WITNESS: Thank you, Mr. Zuckerman.

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